TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 406

WILHELMINA SUMI, PETITIONER,

vs.

ALSIE M. YOUNG

WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 30, 1936.

CERTIORARI GRANTED NOVEMBER 9, 1936.

SUPREME COURT OF THE UNITED STATES

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WILHELMINA SUMI, PETITIONER,

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX.

	Page
Record from Probate Court, Fairbanks Precinct, Territory of Alaska	
Petition for order fixing amount of bond	1
Notice of petition, etc.	1
Marshal's return of notice	5
Protest against fixing bond of guardian, etc.	6
Answer of petitioner to protest	7
Motion to dismiss or for a continuance	11
Amended protest against fixing bond of guardian, etc.	13
Motion to strike amended protest	16
Order and judgment	20
Notice of appeal	21
Exceptions to order and judgment	26
Commissioner's certificate	27
Record from District Court, Territory of Alaska	30
Motion to set case for hearing	31
Motion to dismiss appeal	31
Minute entry of hearing	32
Order denying motion to dismiss	34
Order setting matter for trial	35
Minute entries of trial	35
Order sustaining judgment of Commissioner	36

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Page

Record from District Court, Territory of Alaska—Continued.
Minute entries of hearing on objections to proposed findings of fact, etc. 38
Ruling on findings as requested by appellant and appellee 39
Findings of fact and conclusions of law 40
Objections to and amendments of proposed findings and conclusions 45
Motion for new trial, etc. 48
Minute entry of argument on motion for new trial, etc. 50
Order and judgment 51
Order extending time 54
Order staying execution 54
Order of stay, etc. 55
Petition for appeal 55
Minute entry of hearing on motion to dismiss appeal 56
Assignments of error 57
Order allowing appeal 60
Citation and service 61
Order extending time 62
Cost bond and order 63
Stipulation reprinting of record, etc. 66
Order setting motion for stay for hearing 67
Minute entry of hearing on motion for stay 67
Order staying execution 68
Bill of exceptions 69
Caption 69
Testimony of Wilhelmina Sumi 70
Andrew Neiland 74
John E. Youel 77
Louise Van Bibber 78
Agnes Herring 79
Wm. J. Campbell 81
Alsie M. Young 83
Joe Crosson 99
Opinion, Hill, J. 102
Order settling bill of exceptions 104
Order extending time 105
Præcipe for transcript of record 107
Clerk's certificate 108
Requested additions to præcipe for record 109
Will of Mayme Helen Young 111
Proposed findings of fact and conclusions of law 116
Clerk's certificate 122
Proceedings in U. S. C. C. A., Ninth Circuit 125
Motion to dismiss appeal 127
Order of submission 128
Order directing filing of opinion and decree 129
Opinion, Mathews, J. 129
Decree of dismissal 133
Order denying petition for rehearing 134
Order staying issuance of mandate 135
Clerk's certificate 136
Order allowing certiorari 137

ATTORNEYS OF RECORD

LOUIS K. PRATT,
Fairbanks, Alaska,
Attorney for Petitioner and Appellant.

CECIL H. CLEGG,
Fairbanks, Alaska,
Attorney for Alsie M. Young, Appellee.

In the Probate Court, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, at Fairbanks, Alaska.

No. 549

In the Matter of the Estate of
MAYME HELEN YOUNG,
Deceased.

PETITION OF TESTAMENTARY GUARDIAN FOR ORDER FIXING AMOUNT OF BOND.

Comes now Alsie M. Young, petitioner, and respectfully represents and shows to the Court as follows:

I.

That he is a resident and inhabitant of the Town of Coleman, Michigan, and of the State of Michigan, and that he is a married man residing in said town and state with his family.

II.

That the above named decedent, Mayme Helen Young,. died testate in the Town of Fairbanks,

Alaska, on the 4th day of May, 1934; that at the time of her death she was a resident and inhabitant of said town of Fairbanks, Alaska; that at the time of her death as aforesaid, she left surviving her, amongst others, two minor children, to wit, George Houston Cook, age nine years, and Ruth Marion Cook, age eight years; that said minor children, George Houston Cook and Ruth Marion Cook, were and are the children of the said Mayme Helen Young and a former husband, George Cook; that, as affiant is informed and believes, and therefore alleges, the father of each of said children, George Cook, died at Anchorage, Alaska, on or about the 28th day of May, 1926, and that he has not, by last will or otherwise, appointed a guardian for either of said children; and that each of said minor children are now living in said Town of Fairbanks, Alaska, in the possession of one Wilhelmina Sumi.

III.

That prior to the death of the said Mayme Helen Young, mother of said minor children, and on the 21st day of March, 1934, she did make, execute, publish and declare her last will and testament in writing, which said last will and testament was, on the 7th day of May, 1934, duly admitted to probate in the above entitled Court and the above entitled proceeding; that by the terms [1*] of said last will and testament, in paragraph numbered eleven thereof, the said testatrix, Mayme Young, nominated,

*Page numbering appearing at the foot of page of original certified Transcript of Record.

constituted and appointed Alsie Young as Guardian of each of said children aforesaid, to wit, George Houston Cook and Ruth Marion Cook; and that said last will and testament is now on file in the above entitled proceeding in the above entitled Court and the same is herein referred to and made a part of this petition the same as if incorporated herein.

IV.

That the said Alsie Young, nominated, constituted and appointed guardian of each of said children by the terms of said last will and testament in the last preceding paragraph mentioned, is the same person as your petitioner Alsie M. Young.

V.

That your petitioner, Alsie M. Young, hereby signifies his acceptance of the office of guardian of each of said children, George Houston Cook and Ruth Marion Cook, and accepts the said appointment, and desires that the amount of his bond as such guardian be designated by this Court.

WHEREFORE, said petitioner, Alsie M. Young, prays that this petition be allowed and respectfully requests this Honorable Court that the amount of his bond as Guardian for said minor children, George Houston Cook and Ruth Marion Cook, be fixed and determined by an order of this Court, and that, upon compliance by your petitioner with the terms of said order and the approval and acceptance of the said bond by this Honorable Court, Letters

of Guardianship issue to him under the hand and seal of said Court authorizing him to perform all the duties required by law as Guardian of said minor children aforesaid, and confirming his appointment as such Guardian under said Will of Mayme Helen Young, deceased.

And your petitioner will ever pray.

ALSIE M. YOUNG
By CECIL H. CLEGG
His Attorney. [2]

United States of America,
Territory of Alaska,
Fourth Judicial Division.—ss.

CECIL H. CLEGG, being first duly sworn, on oath deposes and says: That he is the attorney for Petitioner, Alsie M. Young, thereunto duly authorized; that he makes this verification as attorney for said Alsie M. Young for the reason that said Alsie M. Young is not present at the place where said verification is made; and that he has read the foregoing petition, knows the contents thereof, and the same is true as he verily believes, except as to those matters alleged upon information and belief, and as to those he believes the same to be true.

CECIL H. CLEGG

Subscribed and sworn to before me on this 12th day of October, 1934.

[Seal] LOUISE PARCHER
Notary Public in and for the Territory of Alaska, residing at Fairbanks, Alaska.

My Commission expires April 30, 1938.

[Endorsed]: Filed Oct. 12, 1934. [3]

[Title of Court and Cause.]

NOTICE

To JULIEN A. HURLEY, Attorney for C. W. Tibbitt, Executor;

To LOUIS K PRATT, attorney for Wilhelmina Sumi; and

To WILHELMINA SUMI:

YOU, AND EACH OF YOU, ARE HEREBY NOTIFIED That I have, on this 12th day of October, 1934, filed in the above entitled Court in the above named proceeding a petition addressed to said Court requesting that the amount of my bond as Guardian under the will of Mayme Helen Young, the above named decedent, of her minor children, George Houston Cook and Ruth Marion Cook, be fixed and determined by the said Court, and that Letters of Guardianship issue to me upon compliance with the terms of the said order and the approval of the bond to be tendered by me as such Guardian under said will; and that the said Court has appointed as the hour and date for the hearing of said petition, Wednesday, the 17th day of October, 1934, at eleven o'clock A. M. of said day, at the Courtroom of the above entitled Court in the Federal Building in the Town of Fairbanks, Alaska, at which said hearing you, and each of you, may then and there be present if you so desire.

Dated at Fairbanks, Alaska, this 12th day of October, 1934.

ALSIE M. YOUNG
By CECIL H. CLEGG
His Attorney.

Service of the foregoing Notice of hearing is acknowledged this 12th day of October, 1934, by receipt of a copy thereof, together with a copy of the Order fixing time of hearing and a copy of the Petition of Testamentary Guardian for order fixing amount of bond.

JULIEN A. HURLEY G.
Attorney for C. W. Tibbitt, Executor.
LOUIS K. PRATT
By MURIEL ANDERSON
Attorney for Wilhelmina Sumi.

[Endorsed]: Filed Oct. 12, 1934. [4]

[Title of Court and Cause.]

MARSHALS RETURN OF NOTICE.

I, J. A. McDonald, United States Marshal, for the Territory of Alaska, Fourth Division, do hereby certify and return that I received a copy of Notice of Hearing with Petition of Testamentary Guardian for Order Fixing Amount of Bond, together with Order Fixing Time for Hearing Petition of Alsie M. Young to have amount of Guardian's Bond Fixed Under the Will, at Fairbanks, Alaska, on the 12th day of October, 1934, and that thereafter on the 12th day of October, 1934, I duly served the same by delivering the said Copy of Notice with Petition of Testamentary Guardian for Order Fixing Amount of Bond, together with Order Fixing Time for Hearing Petition of Alsie M.

Young to have amount of Guardian's Bond Fixed under the Will, to Mrs. Wilhelmina Sumi, personally and in person, at her residence in Fairbanks, Alaska.

Dated at Fairbanks, Alaska, this 13th day of October, 1934.

J. A. McDONALD
United States Marshal
By JOHN J. BUCKLEY
Deputy

Marshals Fees: $3.00.

[Endorsed]: Filed Oct. 13, 1934. [5]

[Title of Court and Cause.]

PROTEST AGAINST FIXING BOND OF ALSIE M. YOUNG AS GUARDIAN AND PETITION FOR APPOINTMENT OF GUARDIAN.

Comes now Wilhelmina Sumi, widow, and grandmother and next of kin to George Houston Cook and Ruth Marion Cook and protests against the petition of Alsie M. Young for an order fixing his bond as Guardian of the persons of the said children but not their estates, as the same appears on file herein, and she hereby petitions the court to appoint her as Guardian of the persons and estates of the said two minor children and as grounds therefor shows to the Court the following state of facts:

I.

That said petition of Alsie M. Young is entitled "In the Matter of the Estate of Mayme Helen Young, deceased," whereas the said petition has nothing whatever to do with the said estate but would be appropriate in a proceeding entitled "In the Matter of the Guardianship of George Houston Cook and Ruth Marion Cook, Minor Children of Mayme Helen Young, Deceased"; that on or about the 21st day of March, 1934, the said Mayme Helen Young, mother to the said minors, while suffering excruciating physical pain and under the influence of opiates, at her home in Fairbanks, Alaska, and in the absence of her mother the said Wilhelmina Sumi and her sisters and other relatives, did sign what purports to be her Last Will and Testament, wherein she did attempt to appoint "Alsie Young" Guardian of the said two minor children, but whether the said Alsie Young and Alsie M. Young, petitioner here is one and the same person this protestant has no means of knowing; that the said Alsie Young is a married man, living with his wife and their three children in Coleman, Michigan, has never even seen these minor children, George Houston and Ruth Marion Cook and has no interest in them other than such as may have been aroused in [6] his mind by knowledge of the fact that their said Mother in the said Will had left them a large amount of property, which according to the inventory returned by C. W. Tibbitt, Executor of the said Will, is of the amount and value of between $35,000.00 and $40,000.00, $13,000.00 and over of which was cash.

II.

That Wilhelmina Sumi, petitioner herein, has been a resident of Fairbanks, Alaska, for more than twenty-five (25) years last past and was and is the mother of children, one of whom Mayme Helen Sumi, was her daughter; that the said daughter married George Cook and during that relation three children were born to them, two of whom were and are said minor children, George Houston Cook, now aged ten years, and Ruth Marion Cook, now nine years old, her grandchildren; that for as much as four years of the lives of the said minors, they have lived with her, she furnishing them suitable food and clothing and attending to their schooling and for more than six months last past has had them in her exclusive custody and control at her home in Fairbanks, at Seventh Avenue and Noble Street; that in 1926 said George Cook died and afterward and in 1928 the said Mayme Helen Cook nee Mayme Helen Sumi was married to Edward Young, who met his death in an airplane accident September 20, 1933; that the said Mayme Helen Young, daughter of petitioner as aforesaid died May 4, 1934; that petitioner is much attached to the said minor children and they to her and she desires to be appointed Guardian of their presons and estates and is physically, mentally and financially qualified for such appointment.

WHEREFORE protestant and petitioner prays this Court for an Order, judgment and decree as follows: that the testamentary appointment by Will

of said Alsie Young be cancelled and revoked and that he be not allowed to qualify as Guardian of the said Minors and that she be appointed their Guardian and the amount of her bond fixed as such; for the costs and disbursements of this proceeding and for all other appropriate relief to which she may be entitled in equity.

LOUIS K. PRATT
Attorney for Protestant and
Petitioner. [7]

United States of America,
Territory of Alaska—ss.

WILHELMINA SUMI on oath says: I am the protestant and petitioner above named and have read the said Protest and Petition and am familiar with the allegations and statements therein contained and the same are true to the best of my knowledge and belief.

WILHELMINA SUMI

Dated at Fairbanks, Alaska, this 15th day of October, 1934.

[Seal] LOUIS K. PRATT,
Notary Public in and for the Territory of Alaska.

My commission expires June 25, 1936.

Service of the foregoing Protest and Petition is hereby acknowledged, by receipt of a copy thereof, this 15th day of October, 1934.

CECIL H. CLEGG
Attorney for Alsie M. Young.

[Endorsed]: Filed Oct. 15, 1934. [8]

[Title of Court and Cause.]

ANSWER OF PETITIONER ALSIE M. YOUNG TO PROTEST FILED HEREIN BY WILHELMINA SUMI.

Comes now Alsie M. Young, petitioner herein, and, for answer to the Protest filed herein by Wilhelmina Sumi, admits, denies and alleges as follows, to wit:

I.

Denies all the allegations of paragraph numbered 1 of said Protest, except that Alsie M. Young is a married man, living with his wife and their children in Coleman, Michigan.

II.

Denies that portion of paragraph numbered II of said Protest reading as follows: "that for as much as four years of the lives of the said minors, they have lived with her, she furnishing them suitable food and clothing and attending to their schooling," and further denies that the said Wilhelmina Sumi is "physically, mentally and financially qualified" to be appointed guardian of the persons and estates of said children.

WHEREFORE, petitioner Alsie M. Young prays that said Protest be dismissed and that the prayer of his petition for order fixing amount of bond be granted.

CECIL H. CLEGG
Attorney for Petitioner,
Alsie M. Young. [9]

United States of America,
Territory of Alaska,
Fourth Judicial Division—ss.

CECIL H. CLEGG, being first duly sworn, on oath deposes and says: That he is the attorney for Petitioner, Alsie M. Young, thereunto duly authorized; that he makes this verification as attorney for said Alsie M. Young for the reason that said Alsie M. Young is not present at the place where said verification is made; and that he has read the foregoing Answer to Protest, knows the contents thereof, and the same is true as he verily believes.

CECIL H. CLEGG.

Subscribed and sworn to before me on this 16th day of October, 1934.

[Seal] LOUISE PARCHER

Notary Public in and for the Territory of Alaska, residing at Fairbanks, Alaska. My commission expires April 30, 1938.

Service of the foregoing Answer, by receipt of a copy thereof, is acknowledged this 17th day of October, 1934.

LOUIS K. PRATT
Attorney for Wilhelmina Sumi.

[Endorsed]: Filed Oct. 17, 1934. [10]

[Title of Court and Cause.]

MOTION TO DISMISS OR FOR A CONTINUANCE.

The Protestant and Petitioner herein, Wilhelmina Sumi, moves the Court for an order dismissing this matter for lack of jurisdiction, or if the Court will not enter such an order, then that the hearing of this matter be continued to and until October 25th, 1934, and as grounds for such requests, she shows to the Court the following:

I.

She moves the Court to dismiss this proceeding for the reason that it is without jurisdiction to entertain the same, in this, that it is entitled "In the Matter of the Estate of Mayme Helen Young, Deceased," a matter that is confined solely to the disposition of the property of Mayme Helen Young, Deceased, whereas the application of Alsie M. Young, on file herein, has to do with his qualifications as Guardian of the persons of two minor children, to wit: George Houston Cook and Ruth Marion Cook, a subject wholly disconnected from the settlement of the Estate of the said Mayme Helen Young.

II.

In the event the Court will not sustain the motion to dismiss as above requested, then she moves the Court for an order continuing the hearing thereof to and until the 25th day of October, 1934, and shows to the Court: That her attorney, Louis K.

Pratt, is attorney for the plaintiff in the case of Joe Mitchell vs. Beaver Dredging Company, No. 3624, now pending in the District Court at Fairbanks, the same involving approximately $3000.00 in money and a foreclosure of a mine *labor's* lien to secure the payment thereof, which said action was set for trial in the said Court for November 16, 1934, at ten o'clock A.M.: that at said time the defendant interposed a motion for a continuance, which said motion was set for hearing on October 17, 1934, at two o'clock P.M., and will [11] require the attendance of her said attorney in opposition to the said motion.

III.

That her daughter, Violet Winbauer, is an important and necessary witness in her behalf in the hearing of this matter, and if present could and would testify that she was at the home of Mayme Helen Young, her sister, before and after March 21, 1934, the day the said sister signed what purports to be her Last Will and Testament; that her said sister suffered intense physical pain both before and after the said day, unless when under the influence of opiates, which were administered to her at frequest intervals, and that on said day she was in no mental condition to make a will; that while she was in the house on said day, she had no knowledge that her sister, Mayme Helen Young was signing a will and only knew that she did after it had occurred; that the said Violet Winbauer lives and is personally present at Tacotna,

Alaska, or in that vicinity, and it would be impossible to get her here for a witness short of eight or ten days or her deposition in less than perhaps thirty days.

LOUIS K. PRATT
Attorney for Protestant and Petitioner.

United States of America,
Territory of Alaska—ss.

WILHELMINA SUMI, on oath says: That she is the Protestant and Petitioner named in the Protest and Petition filed by her herein; that she has read the foregoing motion and is familiar with the allegations and statements therein contained and the same are true to the best of her knowledge and belief.

WILHELMINA SUMI

Subscribed and sworn to before me this 16th day of October, 1934.

[Seal] LOUIS K. PRATT
Notary Public in and for the Territory of Alaska.

My commission expires June 25, 1936. [12]

Service of the foregoing Motion is hereby acknowledged, by receipt of a copy thereof, this 16th day of October, 1934.

CECIL H. CLEGG By L. P.
Attorney for Alsie M. Young.

[Endorsed]: Filed Oct. 16, 1934. [13]

[Title of Court and Cause.]

AMENDED PROTEST AGAINST FIXING BOND OF ALSIE M. YOUNG AS GUARDIAN AND PETITION FOR APPOINTMENT OF GUARDIAN.

Comes now Wilhelmina Sumi, widow, grandmother and next of kin to George Houston Cook and Ruth Marion Cook and protests against the petition of Alsie M. Young for an order fixing his bond as Guardian of the persons of the said children but not their estates, as the same appears on file herein, and she hereby petitions the Court to appoint her as Guardian of the persons and estates of the said two minor children and as grounds therefor shows to the Court the following state of facts:

I.

That said petition of Alsie M. Young is entitled "In the Matter of the Estate of Mayme Helen Young, Deceased," whereas the said petition has nothing whatever to do with the said estate but would be appropriate in a proceeding entitled "In the Matter of the Guardianship of George Houston Cook and Ruth Marion Cook, Minor Children of Mayme Helen Young, Deceased"; that on or about the 21st day of March, 1934, the said Mayme Helen Young, mother to the said minors, while suffering excruciating physical pain and under the influence of opiates, at her home in Fairbanks, Alaska, and in the absence of her mother the said Wilhelmina Sumi and her sisters and other relatives, did sign what

purports to be her Last Will and Testament, wherein she did attempt to appoint "Alsie Young" Guardian of the said two minor children, but whether the said Alsie Young and Alsie M. Young, petitioner herein is one and the same person this protestant has no means of knowing; that on May 7th, 1934, without any notice to the heirs and beneficiaries [14] under the will of said Mayme Helen Young, deceased, and without notice to or the knowledge or consent of this Protestant, then in the actual custody of said minors at her home in Fairbanks, this Court entered an order purporting to admit the said Will to Probate; that even if the said Will and the probate thereof were valid, yet the said Alsie Young failed for a period of more than five months after said supposed probate, to signify his acceptance of such testamentary appointment as Guardian of said Minors or qualify as such and thereby renounced such supposed testamentary appointment; that the said Alsie Young is a married man, living with his wife and their three children in Coleman, Michigan, has never even seen these minor children, George Houston and Ruth Marion Cook and has no interest in them other than such as may have been aroused in his mind by knowledge of the fact that their Mother in the said Will had left them a large amount of property, which, according to the inventory returned by C. W. Tibbitt, Executor of the said Will, is of the amount and value of $37,853.00, $13,153.86 of which was cash.

II.

That Wilhelmina Sumi, petitioner herein, has been a resident of Fairbanks, Alaska, for more than twenty-five (25) years last past and was and is the mother of children, one of whom Mayme Helen Sumi, was her daughter; that the said daughter married George Cook and during that relation three children were born to them, two of whom were and are said minor children, George Houston Cook, now aged ten years, and Ruth Marion Cook, now nine years old, her grandchildren; that for as much as four years of the lives of the said minors, they have lived with her, she furnishing them suitable food and clothing and attending to their schooling and for more than six months last past has had them in her exclusive custody and control at her home in Fairbanks, at Seventh Avenue and Noble Street; that in 1926 said George Cook died and afterward and in 1928 the said Mayme Helen Cook nee Mayme Helen Sumi was married to Edward Young, who met his death in an airplane accident September 20, 1933; that the said Mayme Helen Young, daughter of the Petitioner [15] as aforesaid, died May 4, 1934; that Petitioner is much attached to the said minor children and they to her and she desires to be appointed Guardian of their persons and estates and is physically, mentally and financially qualified for such appointment.

WHEREFORE Protestant and Petitioner prays this Court for an order, judgment and decree as follows: that the testamentary appointment by Will of

said Alsie Young be cancelled and revoked and that he be not allowed to qualify as Guardian of the said Minors and that she be appointed their Guardian and the amount of her bond fixed as such; for the costs and disbursements of this proceeding and for all other appropriate relief to which she may be entitled in equity.

LOUIS K. PRATT,
Attorney for Protestant and Petitioner.

United States of America,
Territory of Alaska—ss.

WILHELMINA SUMI on oath says: I am the Protestant and Petitioner above named and have read the said Amended Protest and Petition and am familiar with the allegations and statements therein contained and the same are true to the best of my knowledge and belief.

WILHELMINA SUMI,

Dated at Fairbanks, Alaska, this 20th day of October, 1934.

[Seal] LOUIS K. PRATT,
Notary Public in and for the Territory of Alaska.

My commission expires June 25, 1936.

Service of the foregoing Amended Protest and Petition is hereby acknowledged, by receipt of a copy thereof, this 20th day of October, 1934.

CECIL H. CLEGG,
Attorney for Alsie Young, By L. P.

[Endorsed]: Filed Oct. 20, 1934. [16]

[Title of Court and Cause.]

MOTION TO STRIKE AMENDED PROTEST.

Comes now Alsie M. Young, petitioner, and respectfully moves the Court to strike out the Amended Protest heretofore filed herein by Wilhelmina Sumi, Protestant and Petitioner, upon the following grounds, namely:

1. That no leave of Court was requested, had or obtained for the filing of the same.

2. That said amended protest was filed after the issues had already been made up and the cause set for hearing.

3. That the said amended protest, and the whole thereof, is irrevelant and immaterial.

CECIL H. CLEGG,
Attorney for Petitioner, Alsie M. Young.

Service of the foregoing motion, by receipt of a copy thereof, is acknowledged this 22nd day of October, 1934.

LOUIS K. PRATT,
Attorney for Wilhelmina Sumi.

[Endorsed]: Filed Oct. 20, 1934. [17]

In the Probate Court, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, at Fairbanks, Alaska.

No. 549.

In the Matter of the Estate of
MAYME HELEN YOUNG, Deceased.

ORDER AND JUDGMENT.

This matter coming on regularly to be heard before the above entitled Court on the 22nd day of October, 1934, at the hour of ten o'clock A. M. upon the petition of Alsie M. Young, testamentary guardian under the last will and testament of Mayme Helen Young, deceased, for an order of said Court fixing the amount of his bond as guardian of the minor children of said deceased, to-wit, George Houston Cook and Ruth Marion Cook, aged nine and eight years respectively, and for the issuance to him of letters of guardianship out of said Court, the said Alsie M. Young appearing by and through his attorney, Cecil H. Clegg, and Wilhelmina Sumi appearing in person and by and through her attorney, Louis K. Pratt, and Wilhelmina Sumi having appeared in said matter and filed a protest against said application of said Alsie M. Young and a petition for the appointment of herself as guardian of said minor children and further requesting the revocation of the testamentary appointment of the said Alsie M. Young as such guardian, to which said protest said Alsie M. Young filed an answer.

The protestant, Wilhelmina Sumi, moved the Court to dismiss the petition of Alsie M. Young for

an order fixing the amount of his bond as guardian on the ground that it was entitled "In the Matter of the Estate of Mayme Helen Young, deceased," which motion, after argument, was denied.

The petitioner, Alsie M. Young, moved the Court to strike the "Amended Protest against fixing Bond of Alsie M. Young as Guardian and Petition for Appointment as Guardian" filed by Wilhelmina Sumi upon the grounds that the same was filed without leave of Court after the issues had already been made up and the [18] case set for hearing and that the said Amended Protest, and the whole thereof, was irrelevant and immaterial, which motion, after argument of the respective counsel, the Court sustained.

Thereupon the said Court having considered the issues raised by the pleadings hereinbefore mentioned and having heard the attorneys for the respective parties in argument thereon, and having considered the law and being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Court that the protest of Wilhelmina Sumi against the fixing of the bond of Alsie M. Young as guardian of said minor children, George Houston Cook and Ruth Marion Cook, and her petition for appointment as guardian in her own behalf, and also her petition requesting the Court to revoke and cancel the testamentary appointment of the said Alsie M. Young as guardian of said children be, and the same are hereby, in all things denied; and

It further appearing to the Court from the said hearing that the prayer of the petition of Alsie M. Young as testamentary guardian under the last will and testament of said decedent, Mayme Helen Young, for an order fixing the amount of his bond as such guardian should be granted; and

It further appearing to the said Court that the said Alsie M. Young is a resident and inhabitant of the town of Coleman, Michigan, and also of the State of Michigan; that he is a married man residing in said town and state with his wife and their three children; that the above named decedent, Mayme Helen Young, died testate in the town of Fairbanks, Alaska, on May 4th, 1934; that at the time of her death she was a resident and inhabitant of said town of Fairbanks, Alaska; that at the time of her death as aforesaid she left surviving her, amongst others, two minor children, to wit, George Houston Cook, aged nine years, and Ruth Marion Cook, aged eight years; that said minor children were and are the children of the said Mayme Helen Young and a former husband, George Cook, who died at Anchorage, Alaska, on or about May 28th, 1926; that the said George Cook, father of said minor children, had not, prior to his death, by last will or otherwise, appointed a guardian for either of said children; that each of said minor children is now [19] living in said town of Fairbanks, Alaska, in the possession of Wilhelmina Sumi; that prior to the death of the said Mayme Helen Young, mother of said minor children, and on March 21st, 1934, she did

make, execute, publish and declare her last will and testament in writing, which said last will and testament was on May 7th, 1934, duly admitted to probate in the above entitled Court and in the above entitled proceeding; that by the terms of said last will and testament, in paragraph numbered 11 thereof, the said testatrix, Mayme Helen Young, nominated, constituted and appointed Alsie Young as guardian of each of said minor children, to wit, George Houston Cook and Ruth Marion Cook, and that said last will and testament is now on file in the above entitled Court, of which this Court takes judicial notice; that the said Alsie Young nominated, constituted and appointed guardian of each of said children aforesaid by the terms of said last will and testament of Mayme Helen Young, deceased, is the same person as Alsie M. Young; that said Alsie M. Young has signified, in the manner required by law, his acceptance of the office of guardian of the persons of each of said minor children, to wit: George Houston Cook and Ruth Marion Cook, aged nine and eight years respectively, and has accepted said appointment and is desirous that the amount of his bonds as such guardian be designated by this Court as required by law; and that the said Alsie M. Young is a fit, proper and competent person to receive said appointment;

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by this Court that the testamentary appointment of said Alsie M. Young by the

terms of the last will and testament of the above named decedent, Mayme Helen Young, as guardian of the person of each of her minor children, George Houston Cook and Ruth Marion Cook, aged nine and eight years respectively, be, and the same is hereby, in all things confirmed; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the bond of said Alsie M. Young as guardian of the person of each of said minor children of said Mayme Helen Young, deceased, to wit, George Houston Cook and Ruth Marion Cook, aged nine and eight years respectively, be, and the same is hereby, fixed and [20] determined in the sum of Three Thousand Dollars ($3,000.00); and

IT IS FURTHER ORDERED by this Court that, upon the filing of a bond in said sum heretofore mentioned, with sufficient surety or sureties, by the said Alsie M. Young as such guardian and the approval thereof by the Commissioner and ex officio Probate Judge of the Fairbanks Precinct, Territory of Alaska, and upon his filing his Oath of Office, Letters of Guardianship issue to him as such guardian under the hand and seal of said Court authorizing him to do and perform all of the duties required of him by law as guardian of the person of each of said minor children aforesaid during the minority of each of them.

DONE IN OPEN COURT at Fairbanks, Alaska, this 26 day of October, 1934.

[Seal] GEO. W. ALBRECHT

United States Commissioner and ex-officio Probate Judge, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska.

[Endorsed]: Filed Oct. 26, 1934. [21]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To Alsie M. Young or Cecil H. Clegg, his attorney:

Wilhelmina Sumi, Grandmother, next of kin and in the actual custody of the minor children, George Houston Cook and Ruth Marion Cook, the subjects of this proceeding, hereby gives notice that she has and does hereby appeal to the District Court for the Territory of Alaska, Fourth Judicial Division, sitting at Fairbanks, from the order and judgment of said Probate Court and the whole thereof, dated October 26th, 1934, wherein said Probate Court approved and confirmed the testamentary appointment of Alsie M. Young, of Coleman, Michigan, as Guardian of said minors, fixed the amount of his bond and ordered that on filing and approval of such bond with oath of office, Letters of Guardianship should issue to him authorizing him to act as Guardian of the persons of said minors but not their property, also refusing to revoke the testamentary appointment of Alsie Young as Guardian

of said children and appoint her as such Guardian as prayed for in the Protest and Petition filed by her in said proceeding.

Dated at Fairbanks, Alaska, this 30th day of October, 1934.

WILHELMINA SUMI
Appellant.

Received a copy of the foregoing notice of appeal and the exceptions thereto attached, this 30th day of October, 1934.

CECIL H. CLEGG
Attorney for Alsie M. Young. [22]

[Title of Court and Cause.]

EXCEPTIONS TO ORDER AND JUDGMENT.

Wilhelmina Sumi, Grandmother, next of kin and in the actual custody of the two minors, George Houston Cook and Ruth Marion Cook, the subjects of these proceedings, excepts to the order and Judgment of said Probate Court of date October 26th, 1934, in connection with her appeal and notice thereon, on the following grounds:

1. She excepts to the action of said Probate Court in overruling her motion to dismiss the proceeding for lack of jurisdiction to entertain the same, in that it was entitled "In the Matter of the Estate of Mayme Helen Young, deceased," whereas it should have been entitled "In the Matter of the Guardianship of George Houston Cook and Ruth

Marion Cook, minor children of Mayme Helen Young, deceased," the Estate Matter having nothing whatever to do with the Guardianship of the said minors.

2. She excepts to the order of said Probate Court sustaining the motion of Alsie M. Young to strike from the files her Amended Protest and Petition and striking the same from the files.

3. She excepts to the findings of fact contained in said Order and Judgment, to wit: "that Alsie M. Young resides with his wife and their three children at Coleman, Michigan," "that George Cook had not by will appointed a Guardian for said minors George Houston Cook and Ruth Marion Cook," "that Alsie Young and Alsie M. Young is one and the same person," "that Alsie M. Young was and is a proper and competent person to act as Guardian of said minors," which findings are a substantial part of the predicate of said Order and Judgment, for the reason that at the hearing on [23] October 22nd, 1934, there was not a scintilla of evidence heard or taken in support of the Petition of said Alsie M. Young alleging such facts.

4. She excepts to the action of said Probate Court in denying her the right to produce evidence in proof of the allegations contained in her Protest and Petition as on file and in denying the prayer thereof.

5. She excepts to said Order and Judgment as a whole, for the reason that it was signed and entered of record in said Probate Court

without the taking or hearing of any evidence whatever, either in proof of the allegations of the Petition of said Alsie M. Young or her Protest and Petition for appointment as Guardian of the said minors George Houston and Ruth Marion Cook and approves and confirms the testamentary appointment of Alsie M. Young as Guardian of the persons of said minors but not of their estates, whereas Chap. 88, Compiled Laws of Alaska authorized the appointment of Guardians for both the persons and estates of minors but not of the persons alone or the estates alone; she further excepts to the said Order and Judgment wherein it fixes the bond of said Alsie M. Young as Guardian and directs the issuance of Letters of Guardianship to him, for lack of jurisdiction to make such order and to the refusal therein to revoke the testamentary appointment of Alsie Young as Guardian of said minors and appoint her such Guardian.

WHEREFORE Appellant prays for the Order and Judgment of the appellate court, directing said Probate Court to revoke the testamentary appointment of Alsie Young or Alsie M. Young as Guardian of said minors and to cancel and annul its order fixing the amount of Guardian's Bond to be filed by said Alsie M. Young and directing the issuance to him of Letters of Guardianship; also awarding her a hearing on her equitable counterclaim embodied in her Protest and Petition for appointment as Guardian of said minor children and for the costs and disbursements of this Appeal, including an attorney's fee for her attorney and all other appropriate relief. [24]

Dated at Fairbanks, Alaska, this 30th day of October, 1934.

WILHELMINA SUMI
Appellant.

Service of the foregoing Exceptions to Order and Judgment is hereby acknowledged, by receipt of a copy thereof, this 30th day of October, 1934.

CECIL H. CLEGG
Attorney for Alsie M. Young.

[Endorsed]: Filed Oct. 30, 1934. [25]

[Title of Court and Cause.]

CERTIFICATE.

United States of America,
Territory of Alaska,
Fairbanks Precinct.—ss.

I, Geo. W. Albrecht, Commissioner and Ex-Officio Probate Judge in and for the Fairbanks Precinct, Fourth Division, Territory of Alaska, do hereby certify that the annexed and foregoing is a true copy of the Petition of Testamentary Guardian for Order Fixing Amount of Bond; Notice and Marshals Return on Notice; Protest against Fixing Bond of Alsie M. Young as Guardian and Petition for Appointment as Guardian; Answer of Petitioner Alsie M. Young to Protest Filed herein by Wilhelmina Sumi; Motion to Dismiss or for a Continuance; Amended Protest Against Fixing Bond

of Alsie M. Young as Guardian and Petition for Appointment as Guardian; Motion to Strike Amended Protest; Order and Judgment; Notice of Appeal and Exceptions to Order and Judgment:—in the above entitled matter, as the same now appear on file and of record in my office.

WITNESS my hand and the seal of the Probate Court of the Precinct and Territory aforesaid, on this, the 2nd day of November, 1934.

[Seal] GEO. W. ALBRECHT
Commissioner and Ex-Officio
Probate Judge.

[Endorsed]: No. 3806. Filed in the District Court, Territory of Alaska, 4th Div., No. 3, 1934. N. H. Castle, Clerk, by E. A. Tonseth, Deputy. [26]

[Title of Court and Cause.]

MOTION TO SET CASE FOR HEARING.

Upon the request of Mr. Louis K. Pratt, attorney for appellant that case be now set for hearing, Mr. Cecil H. Clegg, attorney for Alsie M. Young, Guardian and appellee, objecting and stating that a motion to dismiss the appeal would be interposed, ORDERED that matter be set over to Friday, November 9th to follow Law and Motion Calendar.

Nov. 7. 1934. Entered in Court Journal No. 19, Page 203. [27]

In the District Court, Territory of Alaska, Fourth Judicial Division.

No. 3806

In the Matter of the Estate of

MAYME HELEN YOUNG, Deceased.

MOTION TO DISMISS APPEAL.

Comes now Alsie M. Young, Guardian of the person of George Houston Cook and Ruth Marion Cook, minor children of Mayme Helen Young, deceased, and respectfully moves this Honorable Court to dismiss the appeal filed herein in behalf of Wilhelmina Sumi upon the grounds and for the reasons:

1. That no proper transcript of all the files, papers and evidence pertaining to the order sought to be appealed from has been filed by the appellant, Wilhelmina Sumi, with the Clerk of the District Court in that:

(a) No transcript of the bond of said guardian required to be filed in said Probate Court has been included in said transcript now on file in this Court.

(b) No transcript or copy of the order of said Probate Court approving said bond has been filed as part of the transcript now on file in this Court.

(c) No transcript or copy of the Oath of Office of said Guardian filed in said Probate

Court is included in the transcript of said proceedings filed in this Court.

2. That this Court has no jurisdiction to entertain said appeal for the reason that said Wilhelmina Sumi, appellant, was not a party to the proceedings in said Probate Court and she is, therefore, not authorized under the law to appeal from the said order of the said Probate Court fixing the bond of said guardian, and for the further reason that said Wilhelmina Sumi was not interested in the subject matter of the said proceedings before the said Probate Court and does not claim to be aggrieved by the decision therein rendered. [28]

3. That no notice of hearing of said appeal requiring said guardian to appear in the District Court within twenty days from the date of service of said notice has been served upon the said guardian by the said Wilhelmina Sumi, appellant, as required by Rule 34 of the Rules of this Court, and no notice as required by said Rule 34 with acceptance and proof of service on said guardian has been filed in the said proceedings in this Court.

WHEREFORE, said Guardian prays that said appeal be dismissed and that he have his costs and disbursements together with the statutory attorney's fee provided by law.

CECIL H. CLEGG
Attorney for Alsie M. Young,
Guardian.

Service of the foregoing Motion to Dismiss, by receipt of a copy thereof, is acknowledged this 7th day of October, 1934.

LOUIS K. PRATT
Attorney for Wilhelmina Sumi, Appellant.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 7, 1934. N. H. Castle, Clerk, by E. A. Tonseth, Deputy. [29]

[Title of Court and Cause.]

HEARING ON MOTION TO DISMISS APPEAL.

This matter coming on regularly for hearing at this time, request was made to the Court by Cecil H. Clegg, Esq., representing moving party, that he be permitted to file amended motion to rectify title of Court and so ordered.

Motion to dismiss appeal was then argued by Mr. Clegg, replied to by Mr. Louis K. Pratt, representing appellant and argument closed by Mr. Clegg. Whereupon the matter was submitted and taken under advisement by the Court.

Nov. 9, 1934. Entered in Court Journal No. 19, Page 205. [30]

[Title of Court and Cause.]

ORDER DENYING MOTION TO DISMISS APPEAL.

Now on this day, this matter having heretofore and on November 9, 1934, come on regularly for hearing on motion to dismiss appeal, and the Court being now duly advised in the premises,

IT IS ORDERED that the said motion to dismiss appeal be, and it is hereby denied. (Clerk's note: To which Appellee excepts and exception is allowed.)

Court declared recess until 11:00 A.M.

Nov. 21, 1934. Entered in Court Journal No. 19, Page 226. [31]

[Title of Court and Cause.]

ORDER SETTING MATTER FOR TRIAL.

Upon the oral motion of Louis K. Pratt, Esq., Attorney for appellant and upon his statement in open Court that counsel for the respective parties, appellant and appellee, were agreed, trial of this case was set for 10:00 A.M. of Wednesday, January 2nd, 1935.

Dec. 20, 1934. Entered in Court Journal No. 19, Page 261. [32]

[Title of Court and Cause.]

TRIAL BY COURT.

Statement made by Louis K. Pratt, Esq., representing the appellant Wilhelmina Sumi followed by statement by Hon. Cecil H. Clegg, representing appellee.

Wilhelmina Sumi sworn for appellant and examined by Mr. Pratt and cross-examined by Mr. Clegg.

Note: this evidence taken under objection by Mr. Clegg which objection was overruled and exception taken and allowed.

Andrew Nerland sworn as witness for appellant; examined by Mr. Pratt; no cross.

John E. Youell sworn as a witness for appellant, examined by Mr. Pratt; no cross.

Mrs. Louise Van Bibber and Mrs. Agnes Herring sworn as witnesses for appellant and examined by Mr. Pratt; no cross.

Thereupon appellant rested her case.

William J. Campbell, sworn as witness for appellee; examined by Mr. Clegg and cross examined by Mr. Pratt.

Mrs. Mamie Tibbetts sworn as witness for appellee; examination by Mr. Clegg, and, under objection interposed by Mr. Pratt, witness withdrawn.

Depositions of Alsie M. Young read by Mr. Clegg in behalf of appellee.

After noon adjournment case was continued and the reading of the deposition of Alsie M. Young

was continued; the cross interrogatories were read by Mr. Pratt.

Adjournments were had to secure the presence of Mr. Jos. Crosson who, on appearing was sworn as witness for appellee, examined by Mr. Clegg and cross examined by Mr. Pratt.

Appellee thereupon rested and appellant offering no rebuttal the case proceeded to argument and was thereupon argued by Messrs. Pratt and Clegg for appellant and appellee respectively and argument was continued to 2:00 P.M. of Thursday, January 3d, 1935.

Jan. 2, 1935. Entered in Court Journal No. 19, Page 269. [33]

[Title of Court and Cause.]

TRIAL BY COURT. (continued)

Trial of above entitled cause continued; closing argument by Mr. Louis K. Pratt for appellant, whereupon the case was submitted and taken under advisement by the court.

Jan. 3, 1935. Entered in Court Journal No. 19, Page 269. [34]

[Title of Court and Cause.]

ORDER SUSTAINING JUDGMENT OF COMMISSIONER.

This matter having been heretofore tried before the Court, Hon. K. Pratt representing the appel-

lant Wilhelmina Sumi and Hon. Cecil H. Clegg representing Alsie M. Young and the Court having taken the matter under advisement and being fully advised in the premises, ORDERED that the judgment and Order of the Commissioner be and the same is hereby sustained and the said Alsie M. Young be and he is appointed Guardian of the minor children George Houston Cook and Ruth Marion Cook. On motion of Mr. Pratt he was granted sixty days in which to prepare and file a Bill of Exceptions.

Apr. 16, 1935. Entered in Court Journal No. 19, page 333. [35]

[Title of Court and Cause.]

ORDER SETTING OBJECTIONS TO PROPOSED FINDINGS FOR HEARING.

This matter coming on regularly for hearing at this time, was, on motion of Cecil H. Clegg, Esq., attorney for Alsie Young, set for hearing for Wednesday, May 15th, at 2:00 P. M. subject, however, to the right of Mr. Louis K. Pratt, the attorney for Wilhelmina Sumi, to a further continuance if required.

May 10, 1935. Entered in Court Journal No. 19, page 351. [36]

[Title of Court and Cause.]

HEARING ON OBJECTIONS TO PROPOSED FINDINGS OF FACT, ETC.

Now at this time this matter came on regularly for hearing on the objections to the proposed findings of fact and conclusions of law, Cecil H. Clegg, Esq., appearing for and on behalf of Alsie Young, and Louis K. Pratt, Esq., representing Wilhelmina Sumi.

Argument to the Court was had by respective counsel, whereupon the Court announced that the matter would be taken under advisement and decision rendered at a subsequent date.

May 15, 1935. Entered in Court Journal No. 19, page 357. [37]

[Title of Court and Cause.]

RULING ON FINDINGS AS REQUESTED BY APPELLANT AND APPELLEE.

The Court at this time signed Findings of Fact and Conclusions of Law with certain modifications to same as presented and overruled the objections to and the proposed amendments by appellant; to which ruling the appellant Wilhelmina Sumi excepted and to the Findings as signed, which exception was duly noted and allowed.

May 31, 1935. Entered in Court Journal No. 19, page 371. [38]

[Title of Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

BE IT REMEMBERED That on the 2nd day of January, 1935, said day being one of the regular Court days of the General January, 1934, term of the above entitled Court, there came on regularly to be heard the appeal and exceptions of Wilhelmina Sumi from the order and judgment made and entered by the Honorable George W. Albrecht, Commissioner and ex officio Probate Judge of the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, sitting as such, on the 26th day of October, 1934; that said order was made upon the petition of Alsie M. Young, testamentary guardian under the terms of the last will and testament of Mayme Helen Young, deceased, of her minor children, George Houston Cook, age nine years, and Ruth Marion Cook, age eight years, asking that his bond as such testamentary guardian be fixed by said Probate Court and that Letters of Guardianship issue to him by reason of said testamentary appointment, to which said petition said Wilhelmina Sumi had filed a protest requesting said Probate Court to cancel and revoke the testamentary appointment of said Alsie M. Young as such guardian and that he be not allowed to qualify by furnishing the bond required by statute and in the amount determined by said Probate Court; and said Court having examined the transcript of said proceedings upon said

hearing before said Probate Court now on file herein, and having examined the records of said Probate Court in the above entitled proceeding and having taken, heard and considered certain oral testimony on behalf of said appellant, Wilhelmina Sumi, and in behalf of Alsie M. Young, guardian aforesaid, the respective parties being represented herein by Louis K. Pratt, as attorney for said Wilhelmina Sumi, and by Cecil H. Clegg, as attorney for Alsie M. Young, guardian aforesaid, this Court, being fully advised in the premises, does now make and enter herein the following

FINDINGS OF FACT [39]

I.

That Mayme Helen Young, prior to the 4th day of May, 1934, was a resident and inhabitant of the town of Fairbanks, Fourth Judicial Division, Territory of Alaska; that she died on said day in said town of Fairbanks; that at the time of her death she was the widow of George Edward Young, who died on September 20th, 1933; that she left surviving her, amongst others, two minor children, to wit, George Houston Cook, age nine years, and Ruth Marion Cook, age eight years, who were and are the children of said Mayme Helen Young and a former husband, George Cook; that said George Cook died at Anchorage, Alaska, on or about the 28th day of May, 1926, and that he had not, by last will and testament or otherwise, appointed a guardian for either of said children; and that each of said

minor children is now, and was at the date of said hearing in said Probate Court, living in the town of Fairbanks, Alaska, in the possession and custody of their grandmother, Wilhelmina Sumi, appellant herein.

II.

That prior to her death said Mayme Helen Young did, on March 21st 1934, make, execute, publish and declare her last will and testament in writing, which said last will and testament was, on the 7th day of May, 1934, duly admitted to probate in the Probate Court, Fairbanks Precinct, Fourth Division, Alaska; that by the terms thereof the said testatrix, Mayme Helen Young, nominated, constituted and appointed Alsie Young as Guardian of said minor children, George Houston Cook and Ruth Marion Cook, and nominated, constituted and appointed James M. Young as Trustee of all the real and personal property of her estate, with the exception of certain minor bequests, for the use and benefit, amongst others, of said George Houston Cook and Ruth Marion Cook, minor children involved in this proceeding. [40]

III.

That said Alsie Young, nominated and appointed guardian of each of said children aforesaid by said last will and testament, is the same person named as Alsie M. Young.

IV.

That said Alsie M. Young, by his said petition to the said Probate Court aforesaid, signified his ac-

ceptance of his appointment as guardian under the terms of the will of said Mayme Helen Young hereinabove mentioned, and requested said Probate Court for the Fairbanks Precinct, Fourth Division, Alaska, to designate the amount of his bond as such guardian and prayed that, upon compliance by him with the order of said Probate Court aforesaid fixing the amount of his bond as such guardian and its approval and acceptance by said Probate Court, Letters of Guardianship issue to him as such guardian under the hand and seal of said Probate Court.

V.

That said Probate Court did, by order duly made and entered on the 26th day of October, 1934, fix and determine the amount of bond of said Alsie M. Young as such guardian aforesaid in the sum of $3,000.00, and confirmed his appointment as such guardian under said will of Mayme Helen Young, deceased; that thereafter said Probate Court did issue to the said Alsie M. Young Letters of Guardianship authorizing him to perform all the duties required by law as guardian of the person of each of said minor children aforesaid; and that said Alsie M. Young is in all respects a fit, proper and competent person to act as such guardian and, as such guardian, he is entitled to the immediate and exclusive possession, custody and control of each of said minor children, George Houston Cook and Ruth Marion Cook.

VI.

That each and all of the exceptions taken, made and filed by the appellant, Wilhelmina Sumi, aforesaid to the order of said Probate Court is and are without merit in point of fact.

Dated at Fairbanks, Alaska, this 31st day of May, 1935. [41]

E. COKE HILL
District Judge.

And from the foregoing Findings of Fact, this Court does now make and enter herein the following

CONCLUSIONS OF LAW

I.

That the order and judgment of the Probate Court, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, made and entered in the above entitled proceeding on the 26th day of October, 1934, fixing and determining the amount of the bond of Alsie M. Young as guardian of the persons of George Houston Cook and Ruth Marion Cook, minor children of Mayme Helen Young, deceased, at the sum of $3,000.00 and confirming his appointment as such guardian under the will and testament of said Mayme Helen Young, deceased, and authorizing the issuance to said Alsie M. Young of Letters of Guardianship of the person of each of said children; was regular, valid and legal in all respects and was entirely within the jurisdiction of said Probate Court issuing the same; and that the ex-

ceptions of the appellant, Wilhelmina Sumi, filed herein should be denied and disallowed.

Dated at Fairbanks, Alaska, this 31st day of May, 1935.

E. COKE HILL
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. May 31, 1935. N. H. Castle, Clerk.

Entered in Court Journal No. 19, page 371. [42]

[Title of Court and Cause.]

OBJECTIONS TO AND AMENDMENTS OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The Protestant and Petitioner, Wilhelmina Sumi, objects to the proposed Findings of Fact and Conclusions of Law as contained in the draft prepared and lodged in this Court by the attorney for Alsie M. Young, as follows:

I.

She objects to findings IV, V, and VI found on pages 3 and 4 of the proposed Findings and Conclusions, upon the ground that there was no sufficient evidence to warrant any such findings.

II.

She submits a proposed draft as a substitute for the findings under Roman Numerals IV and V above mentioned as follows:

IV.

That the will of Mayme Helen Young was admitted to Probate May 7, 1934, and thereafter and on Aug. 7, 1934, Joe Crosson was appointed by said Probate Court Guardian of said minors with the knowledge, acquiescence and approval of Alsie M. Young, said Crosson being represented by Cecil H. Clegg as his attorney, who is now representing said Alsie M. Young in this Matter; that afterwards the appointment of said Crosson was annulled in Appellate proceedings in this Court and on October 12, 1934, five months and five days after said will had been admitted to Probate, said Alsie M. Young attempted to accept such testamentary nomination and at his request said Probate Court fixed the amount of his bond as Guardian of their persons but not their estates at $3000.00; that while a document in the form of a Guardian's bond appears among the papers in the office of the Probate Judge, it was not signed by Alsie M. Young in person but was signed for him by Cecil H. Clegg as his attorney and [43] there is no justification by or for the Surety Company attached to or accompanying the same as required by Sec. 3089, C. L. A. (1933).

V.

That said minors were both born in Alaska and have lived all their lives therein and from birth till the death of their Mother May 4, 1934, that is for a period of between three and four years, were under the care of and lived with their Grandmother, Wilhelmina Sumi, at her home at 7th Ave and Noble St., in the town of Fairbanks, and have lived with

her continuously since the death of their mother and by reason of consanguinity and association said Grandmother is much attached to them and they to her and said children do not want to be taken from her and sent to a foreign State to live among strangers. I find that the interests of said minors would be best served by leaving them to the care and in the custody of their said Grandmother.

She also proposes as a substitute for the conclusions of law found in the said draft the following:

CONCLUSIONS OF LAW.

That the said Alsie M. Young, by his laches and acquiescence in the appointment of Joe Crosson as guardian, renounced and waived any rights he may have had under the testamentary appointment of guardian as contained in the will of Mayme Helen Young, and the best interest of the said two minor children George Houston and Ruth Marion Cook, require that they be left with their Grandmother and that she be appointed guardian of their persons and estates.

LOUIS K. PRATT
Attorney for Wilhelmina Sumi.

Service of the foregoing Objections to and Amendments of Proposed Findings of Fact and Conclusions of Law, by receipt of a copy thereof, is hereby acknowledged this 22nd day of April, 1935.

CECIL H. CLEGG
Attorney for Alsie M. Young.

[Endorsed]: Lodged Apr. 22, 1935. N. H. Castle, Clerk, by E. A. Tonseth, Deputy. [44]

[Title of Court and Cause.]

MOTION TO SET ASIDE FINDINGS OF FACT AND CONCLUSIONS OF LAW AND GRANT A NEW TRIAL.

Comes now Wilhelmina Sumi and moves the Court for an order setting aside and annulling its decision as embodied in the Findings of Fact and Conclusions of Law on this Appeal, made and filed in this Court May 31, 1934, upon the following grounds:

1. For the reason that Finding of Fact No. 1, found at page 2 thereof was not sustained in part by any evidence whatever, that is to say, that the statement made therein, to wit: "that said George Cook died at Anchorage, Alaska, on or about the 28th day of May, 1926, and that he had not by last will or testament or otherwise, appointed a guardian for either of said children" was not supported by any evidence whatever and was an important and material part of the said finding;

2. That finding of fact No. 2 was not supported by any evidence whatever in this, that the following details stated therein, to wit: "that prior to her death said Mayme Helen Young did, on March 21, 1934, make, execute, publish and declare her last will and testament in writing, said last will and testament was on the 7th day of May, 1934, duly admitted to probate in the Probate Court, Fairbanks Precinct, Fourth Division, Territory of Alaska," and the further statement made therein, "and nominated, constituted, and appointed James M. Young

as trustee of all the real and personal property of her estate" was not supported by any evidence, nor was the will of Mayme Helen Young produced in evidence, although the said Wilhelmina Sumi in her protest and petition had admitted that Mayme Helen Young had made what purported to be a will on March 21, 1934, and had nominated Alsie M. Young as guardian; [45]

3. That Paragraph 5 of the said Finding of Fact found at pages 3 and 4 was not backed by any sufficient evidence and limits the guardianship to the persons of the said minor children and denies to the said Alsie M. Young the custody and management of their estates, makes no reference to the qualification of the said Wilhelmina Sumi to act as guardian for the said children and fails to state that the best interest of the said minors, George Houston and Ruth Marion Cook would be best served by the appointment of Alsie M. Young as their guardian rather than Wilhelmina Sumi;

4. Because the Conclusions of Law found in the said decision commencing at page 4 are not based upon any sufficient evidence to warrant the same, in the following respects; it confirms the appointment of Alsie M. Young as guardian of the persons of the said children but not their property in contravention of Sections 4513, 4513, 4515, 4516, Compiled Laws of Alaska (1933) without any finding of fact that the best interests of the said minors required the appointment of the said Alsie M.

Young as guardian of the persons of the said George Huston and Ruth Marion Cook rather than their grandmother, Wilhelmina Sumi.

LOUIS K. PRATT
Attorney for Wilhelmina Sumi.

Received a copy of the foregoing motion this 3rd day of June, 1935.

CECIL H. CLEGG
Attorney for Alsie M. Young.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Jun. 3, 1935. N. H. Castle, Clerk. [46]

[Title of Court and Cause.]

ARGUMENT ON MOTION TO SET ASIDE FINDINGS AND FOR NEW TRIAL.

This matter coming on regularly to be heard at this time upon the motion of Louis K. Pratt, Esq., attorney for Wilhelmina Sumi to set aside the Findings and for a New Trial, argument was had by Mr. Pratt in support of said motions, replied to by Cecil H. Clegg, Esq., representing Alsie M. Young, Guardian and argument closed by Mr. Pratt, whereupon the motions were submitted for the consideration of the Court and taken under advisement.

Jun. 7, 1935. Entered in Court Journal No. 19, page 381. [47]

In the District Court for the Territory of Alaska, Fourth Division.

No. 3806.

In the Matter of the Estate of
MAYME HELEN YOUNG, Deceased.

ORDER AND JUDGMENT.

BE IT REMEMBERED that on the 2nd day of January, 1935, said day being one of the regular Court days of the General January, 1934, term of the above entitled Court, there came on regularly to be heard the appeal and exceptions of Wilhelmina Sumi from the order and judgment made and entered by the Honorable George W. Albrecht, Commissioner and ex officio Probate Judge of the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, sitting as such, on the 26th day of October, 1934; that said order was made upon the petition of Alsie M. Young, testamentary guardian under the terms of the last will and testament of Mayme Helen Young, deceased, of her minor children, George Houston Cook, age nine years, and Ruth Marion Cook, age eight years, asking that his bond as such testamentary guardian be fixed by said Probate Court and that Letters of Guardianship issue to him by reason of said testamentary appointment, to which said petition said Wilhelmina Sumi had filed a protest requesting said Probate Court to cancel and revoke the testamentary appointment of said Alsie M. Young as such guardian and that he be not allowed to qualify by furnishing the bond

required by statute and in the amount determined by said Probate Court; and said Court having examined the transcript of said proceedings upon said hearing before said Probate Court now on file herein, and having examined the records of said Probate Court in the above entitled proceeding and having taken, heard and considered certain oral testimony on behalf of said appellant, Wilhelmina Sumi, and in behalf of Alsie M. Young, guardian aforesaid, the respective parties being represented herein by Louis K. Pratt, as attorney for said Wilhelmina Sumi, and by Cecil H. Clegg, as attorney for Alsie M. Young, guardian aforesaid, and the Court having taken said matter under advisement to and until the 16th [48] day of April, 1935, and having then orally announced its decision denying said exceptions and each of them, and having made and entered herein its Findings of Fact and Conclusions of Law, and having heard and considered the Motion of the appellant, Wilhelmina Sumi, "to set aside Findings of Fact and Conclusions of Law and grant a new trial" and having denied the same, and being fully advised in the premises,

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED That the order and judgment of the Probate Court, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, made and entered on the 26th day of October, 1934, in the above entitled matter fixing the amount of bond of Alsie M. Young as guardian of the persons of George Houston Cook, age nine

years, and Ruth Marion Cook, age eight years, and authorizing the issuance of Letters of Guardianship to said Alsie M. Young, and confirming his appointment as such guardian under the last will and testament of Mayme Helen Young, deceased, be, and the same is, in all things hereby confirmed and approved.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED That each and all of the exceptions of appellant, Wilhelmina Sumi, to said order and judgment of said Probate Court be, and the same is and are hereby, denied and disallowed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That the Clerk of this Court be, and he is hereby, directed to forward to the Honorable George W. Albrecht, Commissioner and ex officio Probate Judge for the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, a copy of this order and judgment; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That the costs of this appeal to be taxed by the Clerk of this Court to the amount of $88.35 be paid by the said appellant, Wilhelmina Sumi.

DONE AND ORDERED ENTERED at Fairbanks, Alaska, this 14th day of June, 1935.

E. COKE HILL,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Jun. 14, 1935. N. H. Castle, Clerk.

Entered in Court Journal No. 19, page 391. [49]

[Title of Court and Cause.]

MINUTE ORDER EXTENDING TIME TO SERVE BILL OF EXCEPTIONS.

On oral motion of Louis K. Pratt, Esq., attorney for Wilhelmina Sumi, the appellant in the above entitled cause, ORDERED that he have sixty (60) days from the date hereof in which to prepare, serve and file a Bill of Exceptions herein.

Jun. 14, 1935. Entered in Court Journal No. 19, page 391. [50]

[Title of Court and Cause.]

ORDER.

On motion of Wilhelmina Sumi, by and through Louis K. Pratt, her attorney,

IT IS ORDERED that execution of the Order and Judgment herein of date June 14, 1935, be, and the same is hereby stayed until and including Monday, June 17, 1935, and in the meantime no process of any kind shall be issued thereon.

Dated at Fairbanks, Alaska, this 15th day of June, 1935.

E. COKE HILL,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Jun. 15, 1935. N. H. Castle, Clerk, by E. A. Tonseth, Deputy.

Entered in Court Journal No. 19, page 393. [51]

[Title of Court and Cause.]

ORDER OF STAY AND SETTING ARGUMENT ON OBJECTIONS TO APPEAL.

Cecil H. Clegg, Esq., attorney for Alsie M. Young, Guardian, interposed oral objections to the allowance of the appeal by Louis K. Pratt, Esq., attorney for Wilhelmina Sumi; Mr. Pratt requesting further stay, ORDERED that the argument on the objections be had at 4 P.M. of Tuesday, June 18th and that stay be granted until after the disposition of said motion.

Jun. 17, 1935. Entered in Court Journal No. 19, Page 393. [52]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Comes now Wilhelmina Sumi, petitioner herein for appointment as Guardian of two of deceased's children, considering herself aggrieved by the order and judgment of this Court, made and entered in the above entitled action of the 14th day of June, A. D. 1935, and does hereby appeal from the said order and judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified and set forth in the Assignment of Errors which is filed herewith, and the said Wilhelmina Sumi prays that this appeal may be allowed and that a Citation may be issued accordingly to Alsie M. Young, petitioner herein for ap-

pointment as Guardian of said two children and that a transcript of the record and papers upon which the said order and judgment was made, duly authenticated by the Clerk of this Court, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

Plaintiff further prays that this Court fix the amount of a Cost Bond to be approved by this Court, and filed herein by the appellant upon said Appeal.

Dated, Fairbanks, Alaska, June 14th, 1935.

LOUIS K. PRATT
Attorney for Wilhelmina Sumi.

Due service of the foregoing petition for appeal and a copy thereof is hereby acknowledged, this 15th day of June, 1935.

CECIL H. CLEGG
Attorney for Alsie M. Young.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Jun. 18, 1935. N. H. Castle, Clerk, by E. A. Tonseth, Deputy. [53]

[Title of Court and Cause.]

HEARING ON MOTION TO DISMISS APPEAL.

This matter came on regularly for hearing on the objections interposed by appellee to the granting of an appeal from the judgment dated June 14,

1935, and was argued by Cecil H. Clegg, Esq., representing the appellee Alsie M. Young, guardian, and Louis K. Pratt, Esq., representing Wilhelmina Sumi, the appellant, whereupon, at the close of said argument, the Court being fully advised, overruled said objections, to which ruling an exception was taken by Mr. Clegg and allowed. The Court thereupon signed the various orders with respect to said appeal.

Jun. 18, 1935. Entered in Court Journal No. 19, Page 394. [54]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR.

Comes now Wilhelmina Sumi, one of the petitioners for appointment as guardian of George Houston and Ruth Marion Cook, minor children of the said deceased by a former husband, and assigns as errors of the Court in the Findings of Fact and Conclusions of Law and the order and judgment herein, as follows:

I.

The Court erred in ignoring and overruling her exceptions to the petition of Alsie M. Young for appointment of guardian to the said children on the ground that his said petition was entitled as above, whereas it should have been entitled in order to give the Probate Court jurisdiction "In the Matter of the Appointment of a Guardian for

George Houston Cook and Ruth Marion Cook, minor children of Mayme Helen Young, deceased."

II.

The Court erred in refusing to adopt and use "Objections to and Amendments of Proposed Findings of Fact and Conclusions of Law" submitted by Mrs. Sumi prior to the signing of the Finding of Fact and Conclusions of Law, and in overruling her motion for a new trial.

III.

The Court erred in Findings of Fact No. 1 and 2 in the respect that the said Findings allege as a fact "that George Cook, father of George Houston and Ruth Marion Cook, died in 1926 but did not, prior to his death, make a will appointing some or anyone guardian of his said two children and that on March 21, 1934, said Mayme Helen Young, nee Mayme Helen Cook, made her last will and testament which was duly admitted to Probate on the 7th day of May, 1934, and that in said will she nominated Alsie Young, guardian of her said two minor children", for the reason that there was not a scintilla of evidence as to the death of George [55] Cook and his failure to appoint a Guardian by will upon which to base the said important and necessary Finding of Fact, and the will of Mayme Helen Young was not introduced in evidence at the trial or hearing, but was taken as judicially known to the Court.

IV.

The Court committed error at the hearing and trial of this matter in the Findings and final order and judgment in this: that the approval and confirmation of the appointment of Alsie M. Young, as guardian of said minor children, is limited to the persons of the said two minors and he is excluded from any management or control of their property and estate and James M. Young, a brother, is recognized as trustee of all their real and personal property, with possession and management thereof.

V.

The Court erred in its final order and judgment in that therein it confirms and approves the appointment of Alsie M. Young as Guardian of the said two minor children and ignores and denies the petition of Wilhelmina Sumi, their Grandmother, for appointment as Guardian of said minors, for the sole reason that Alsie M. Young was nominated as guardian in the will of Mayme Helen Young (which said will was not introduced in evidence) and without any reference whatever to the happiness, welfare and wishes of the said two minor children.

LOUIS K. PRATT
Attorney for Wilhelmina Sumi.

Service of the foregoing Assignments of Error, by receipt of a copy thereof, is hereby acknowl-

edged this 15th day of June, 1935.

CECIL H. CLEGG
Attorney for Alsie M. Young.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Jun. 18, 1935. N. H. Castle, Clerk, by E. A. Tonseth, Deputy. [56]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

Now, on this 18th day of June, 1935, this cause came on regularly to be heard before the above Court, upon the petition of the above named plaintiff for an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the order and judgment of this Court made and entered in this action on the 14th day of June, 1935, and the Court being fully advised in the premises,

IT IS ORDERED that Wilhelmina Sumi's appeal to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, be, and the same is hereby allowed.

It is further ORDERED that the amount of the Cost Bond herein be, and the same is hereby fixed in the sum of $250.00.

Dated, Fairbanks, Alaska, June 18th, 1935.

E. COKE HILL
District Judge.

Due service and copy hereof admitted this 15th day of June, 1935.

CECIL H. CLEGG
Attorney for Alsie M. Young.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Jun. 18, 1935. N. H. Castle, Clerk.

Entered in Court Journal No. 19, Page 394. [57]

[Title of Court and Cause.]

CITATION ON APPEAL.

The President of the United States of America, to Alsie M. Young, petitioner, and Cecil H. Clegg, his attorney, GREETING:

You are hereby cited to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, State of California, within thirty (30) days from the date of this Citation, pursuant to an order allowing an appeal, made and entered in the above entitled action, in which Wilhelmina Sumi is appellant and Alsie M. Young was and is petitioner for the same appointment and appellee, to show cause, if any there be, why the order and judgment made and entered in the above entitled action on the fourteenth day of June A. D. 1935, as mentioned in said order allowing appeal, should not be set aside and

reversed, and why speedy justice should not be done to said appellant above named in that behalf.

WITNESS THE HONORABLE CHARLES EVANS HUGHES, Chief Justice of the Supreme Court of the United States of America on this 18th day of June, A. D. One thousand nine hundred thirty-five, and of our Independence one hundred and fifty-ninth.

E. COKE HILL
District Judge.

Attest:
[Seal] N. H. CASTLE,
Clerk.

Due service of the foregoing citation admitted this 15th day of June, 1935.

CECIL H. CLEGG
Attorney for Alsie M. Young.

Entered in Court Journal No. 19, page 394.

[Endorsed]: Filed Jun. 18, 1935. [58]

[Title of Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH TO FILE AND DOCKET CAUSE ON APPEAL.

This matter coming on for hearing upon the motion of Wilhelmina Sumi, appellant, for an order extending the time within which to file and docket the record herein on appeal with the Clerk of the United States Circuit Court of Appeals for the

Ninth Circuit, at San Francisco, California, and it appearing to the satisfaction of the Court, that the time allowed by law and the order of this Court allowing said appeal is insufficient for the purpose, and that the appellant desires an extension of time until and including August 1st, 1935, within which to file and docket said cause, and all and singular the matters being fully considered by the Court,

It is ORDERED that the appellant be and is hereby given and granted until and including August 1st, 1935, within which to file and docket the record on appeal with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

Dated, Fairbanks, Alaska, June 18, 1935.

E. COKE HILL
District Judge.

Due service hereof admitted this 17th day of June, 1935.

CECIL H. CLEGG
Attorney for Alsie M. Young.

Entered in Court Journal No. 19, page 395.

[Endorsed]: Filed Jun. 18, 1935. [58½]

[Title of Court and Cause.]

COST BOND AND ORDER

KNOW ALL MEN BY THESE PRESENTS: That we, Wilhelmina Sumi as principal and Emil Pozza and Leo Preg as sureties, are held and firmly

bound unto Alsie M. Young, petitioner for appointment as Guardian herein, in the sum of Two Hundred & Fifty dollars, ($250.00) lawful money of the United States of America, to be paid to the said Alsie M. Young, his heirs, executors, administrators and assigns, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

SEALED WITH OUR SEALS and dated this 18th day of June, 1935.

The condition of the above obligation is such, that whereas the above bounden Wilhelmina Sumi has filed her petition for appeal and is about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain order and judgment made and entered by the above entitled Court in the above entitled action on the 14th day of June, 1935.

Now, therefore, if the above named Wilhelmina Sumi shall prosecute the said appeal to effect, and answer all costs if she shall fail to make good her plea, then this obligation shall be void, otherwise to remain in full force and effect.

WILHELMINA SUMI
EMIL POZZA
LEO PREG [59]

United States of America,
Territory of Alaska,
Fourth Division.—ss.

Emil Pozza and Leo Preg, being first duly sworn on oath, each for himself, deposes and says: I am

one of the sureties named in the foregoing bond; That I am a resident of the Fourth Judicial Division of Alaska; That I am not an attorney at law, Marshal, Clerk, or other officer of any Court; That I am worth the sum of two hundred & fifty ($250.00) over and above all just debts and liabilities, and exclusive of property exempt from execution.

EMIL POZZA
LEO PREG

Subscribed and sworn to before me this 18th day of June, 1935.

[Seal] LOUIS K. PRATT
Notary Public in and for Alaska.

My Commission expires June 25, 1936.

ORDER APPROVING BOND.

The above and foregoing cost bond is hereby approved on this 20th day of June, 1935.

E. COKE HILL
District Judge.

Due service of copy of above Bond and Order admitted this 20th day of June, 1935.

CECIL H. CLEGG
Attorney for Alsie M. Young.

O.K.
C. H. CLEGG

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Jun. 20, 1935. N. H. Castle, Clerk. [60]

[Title of Court and Cause.]

STIPULATION RE PRINTING OF RECORD AND PLACE OF HEARING APPEAL.

It is hereby stipulated by and between Wilhelmina Sumi and Alsie M. Young, petitioners for appointment as Guardian herein, through their respective attorneys, that in printing the papers and records to be used on the hearing on appeal in the above entitled cause, for the consideration of the United States Circuit Court of Appeals for the Ninth Circuit, the title of the Court and cause in full on all papers shall be omitted, except on the first page of said record, and that there shall be inserted in place of said title in all papers used as a part of said record, the words "Title of Court and Cause"; also that all indorsements on all papers used as a part of said record shall be omitted, except the Clerk's filing marks and the admission of service. It is also stipulated that this appeal may be heard at San Francisco, California.

Dated, Fairbanks, Alaska, June 18th, 1935.

LOUIS K. PRATT
Attorney for Wilhelmina Sumi.
CECIL H. CLEGG
Attorney for Alsie M. Young.

[Endorsed]: Filed Jun. 20, 1935. [61]

[Title of Court and Cause.]

MINUTE ORDER SETTING MOTION FOR STAY OF EXECUTION FOR HEARING.

On motion of Louis K. Pratt, Esq., attorney for Wilhelmina Sumi, ORDERED that the motion for an order staying the execution of the Order and Judgment heretofore rendered herein, be heard at 10:00 A. M. of Friday, June 28th, 1935.

Jun. 27, 1935. Entered in Court Journal No. 19, page 402. [62]

[Title of Court and Cause.]

HEARING ON MOTION FOR STAY OF EXECUTION.

The Court having heretofore on June 26th shortened time for notice of hearing on motion of Louis K. Pratt, Esq., to stay execution of Order and Judgment and said hearing being set for this time and the matter being argued by Mr. Pratt for Wilhelmina Sumi, the appellant, and by Cecil H. Clegg, Esq., in behalf of the appointed Guardian, Alsie M. Young, and the matter being thereupon submitted and the Court being fully advised in the premises, the following Order was signed in the above entitled cause:

On motion of Wilhelmina Sumi, by and through Louis K. Pratt, her attorney,

IT IS ORDERED that execution of the Order and Judgment herein of date June 14, 1935, be, and the same is hereby stayed until the appeal herein is

heard and decided in the United States Circuit Court of Appeals for the Ninth Circuit, and in the meantime no process of any kind shall be issued thereon.

Jun. 28, 1935. Entered in Court Journal No. 19, page 402. [63]

[Title of Court and Cause.]

ORDER

On motion of Wilhelmina Sumi, by and through Louis K. Pratt, her attorney,

IT IS ORDERED that execution of the Order and Judgment herein of date June 14, 1935, be, and the same is hereby stayed until the appeal herein is heard and decided in the United States Circuit Court of Appeals for the Ninth Circuit, and in the meantime no process of any kind shall be issued thereon.

Dated at Fairbanks, Alaska, this 28th day of June, 1935.

E. COKE HILL
District Judge.

Time for notice of hearing the application for stay of execution in the above matter is hereby shortened to 12 hours.

Done in Chambers at 12 o'clock noon, June 26th, 1935, at Fairbanks, Alaska.

E. COKE HILL
District Judge.

Received a copy of the foregoing order this 26th day of June, 135, at 2 o'clock P. M.

CECIL H. CLEGG
Attorney for Alsie M. Young.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Jun. 28, 1935. N. H. Castle, Clerk.

Entered in Court Journal No, 19, page 402. [64]

BILL OF EXCEPTIONS

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div., Jul. 16, 1935. Alton G. Nordale, Clerk.

Re-filed in the District Court, Territory of Alaska, 4th Div. Jul. 25, 1935. Alton G. Nordale, Clerk. [65]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that on January 2nd, 1935, the above entitled Matter came on to be heard before the Court upon the appeal of Wilhelmina Sumi from the order and judgment herein of the Probate Court for Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, of date October 26, 1934, upon the transcript of the proceedings in the Probate Court and the exceptions of Wilhelmina Sumi to such proceedings and to the order and judgment entered by the Court below. Louis K.

Pratt appeared as attorney for Wilhelmina Sumi and Cecil H. Clegg, for Alsie M. Young.

Testimony was introduced by both Petitioners as follows:

WILHELMINA SUMI,

a witness in her own behalf, after being duly sworn, testified as follows:

Direct Examination

By Mr. Pratt:

My name is Wilhelmina Sumi; I am 54 years of age and have lived in Fairbanks, Alaska, at 7th and Noble Streets, for the past 28 years. When I came to Fairbanks I was a married woman but my husband died in 1916. During the marriage relation we had three children born to us, all girls, whom we named Mayme Helen, Violet Naoma and Sylvia Ethel. My daughter Mayme Helen Sumi in 1922 married George Houston Cook who died in 1926. During their married relation three children were born to them, viz: Mayme Gertrude, George Houston and Ruth Marion Cook. Two of her children George [66] Houston and Ruth Marion Cook are involved in this proceeding. After George Cook's death they stayed with me for more than half of the time and I have got them now. I have taken care of them just as though they were my own, furnishing them with food, clothing and schooling. Since the death of Mayme Helen Young, mother of these two children, I have had them with me all of the time.

(Testimony of Wilhelmina Sumi.)

Q. Mayme married Ed. Young in 1928, didn't she?

A. Yes.

Q. And these two children stayed with their mother after that?

A. They stayed with me. The little girl stayed with me until Christmas, after she was married, and the boy stayed with me all winter until the next spring.

Q. And after that were there any intervals when the children would come and stay with you?

A. Yes. The time they went outside when Ed. Young won the ice pool they stayed with me four months.

Q. Both of them?

A. Yes, and they stayed with me a week time and times again.

Q. After she married Ed. Young?

A. Yes.

Q. Do you desire to keep them?

A. I do. Yes.

Q. You filed a petition asking that you be appointed guardian.

A. Yes.

Q. Now, at the hearing was there any testimony taken whatever with reference to Mr. Alsie M. Young's petition and your protest and

(Testimony of Wilhelmina Sumi.)

petition in the Probate Court? Was there any testimony taken at all?

The COURT: I think it will be conceded that there was no testimony taken.

Mr. CLEGG: Yes, Your Honor.

A. No.

Mr. PRATT: Cross-examine.

Cross Examination

By Mr. CLEGG: After George Cook's death she placed the children [67] with me and agreed to pay me $75.00 per month for taking care of them, but she didn't have money enuf to do that and she only gave me an occasional $5.00 or $10.00. She went to work in a restaurant. After she married Ed. Young in 1928, she and her husband went outside and were gone for four months and during that period the two children George Houston and Ruth Marion were left with me and I took care of them. Ed. Young gave me a check for $150.00 for the four months period and my daughter, Mayme Helen Young, shortly before her death, handed me a check for $100.00 and another for $80.00. The $150.00 check and the $180.00 checks and the occasional $5.00 and $10.00 was all I ever received from anybody for taking care of those children. I have always worked and earned money. Sometimes I have worked for the government, sometimes for three, four, five or nine months of the year at $150.00 per month. I worked for the government

(Testimony of Wilhelmina Sumi.)

in the Detention Hospital and at the Jail taking care of women prisoners or insane women. At the time of my husband's death my three children were minors. After you (Mr. Clegg) went on the bench, you asked me to accept assistance from the Territory for my minor children. I did not ask it but I did, for a period of four years, accept assistance for two of my minor children until they were 16 years of age, that is, for a period of four years, but I never received anything from any source on account of my oldest daughter Mayme Helen Young. Other than that I have never received a penny from anybody and have taken care of myself, my children and my grandchildren from my own earnings. I went to school six years in my youth in the old country but never attended school in America. I was 16 years of age when I came to America and was married at the age of 23. Three girls were born to me but no male child. I have taken care of other people's children a lot, sometimes for as long as two or three months.

Re-Direct Examination

I have had practically nothing for taking care of my two [68] grandchildren and after my daughter married Ed. Young, time and time again, I have bought shoes and clothes for them. I own a lot in Fairbanks with a story and a half log house situate thereon, containing four rooms. I have another cabin on the same lot which I rent and my income

comes from the rental and for housework and work for the government.

Q. Can you take care of these children and clothe them and give them good food and send them to school?

A. Yes. I can.

Q. You can earn enough to do that?

A. Yes.

Q. You are willing to do that?

A. Yes. I am willing to do that.

Q. Why are you so willing?

A. Because I love them and they were mine.

Q. This man, Alsie M. Young, was here one time a few months ago.

A. I heard he was here but I didn't see him.

Q. He didn't call to see you or the children?

A. No.

Mr. PRATT: That is all.

ANDREW NERLAND,

a witness for appellant, after being duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. PRATT: My name is Andrew Nerland, age 64 years. I have lived in Fairbanks, Alaska, since 1904. I am acquainted with Wilhelmina Sumi and have known her for something over 20 years; in carrying on my work I have been at her home a

(Testimony of Andrew Nerland.)

number of times papering the place, putting down carpets in her house and of course I have seen her frequently at other places. I know her fairly well. My business is handling paint, paper, selling furniture, carpets, linoleum, windows, sashes and doors; things of that kind.

Q. From what you know of Mrs. Sumi, what would you say as to her fitness and qualifications to act as guardian of two [69] minor children, these children that are involved in this proceeding, George Houston Cook and Ruth Marion Cook. The boy is ten years old and the girl nine I think.

Mr. CLEGG: We object as incompetent and immaterial.

(Objection overruled, and Mr. Clegg asks for and is given an exception).

A. Knowing the way she brought up her own children under very trying circumstances, I would say that the present time under more favorable circumstances she would be more capable of taking care of these children even than she took care of her own.

Q. How do you say she took care of her own?

A. In a substantial way, I would say.

Q. Would it be your opinion and judgment that she is a proper person to have the care, education and control of these two children? Would that be your judgment and opinion from what you know of her?

A. It would.

(Testimony of Andrew Nerland.)

Cross Examination

By Mr. CLEGG: That is just my opinion based on my acquaintance with her; when this contest came up I expressed myself at least twice that Mrs. Sumi ought to have these children; I did not know anything about the legal questions involved. I think I know the circumstances pretty well and I want to say this Judge Clegg, that so far as expressing myself frequently I did say I did but outside of two occasions I don't think I ever discussed the case in our store or any place else. I did express it, yes, and I had a decided opinion about it and have today; that opinion is not on account of my sympathy for Mrs. Sumi but on account of my sympathy for the children; I have never said it would be a shame to take them out of the country, but I do know as a father of children myself, I do know that I feel that Mrs. Sumi can better take care of those two children that she has taken care of for a [70] long time—I myself know that she has kept them for a long time—she perhaps can take better care of them than many people could.

Mr. CLEGG: That is all.

JOHN E. YOUEL,

a witness for appellant, after being duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. PRATT: My name is John E. Youel, age 60 years, residence Fairbanks, Alaska, by profession I am a Presbyterian Clergyman. I am acquainted with Wilhelmina Sumi and the two children George Houston Cook and Ruth Marion Cook. Have known Mrs. Sumi for 7 years and the children for about 8 years. I have seen a good deal of them. I know where they live and have been to her house which is a very comfortable home; she is industrious, hard working and conscientious. She does housework or work of that character and sometimes works at the Detention Hospital.

"Q. From what you know of her, what would you say as to her fitness and capacity to have the control and the education and maintenance of these two children?

(Mr. Clegg objects as incompetent, irrelevant and immaterial. Objection overruled and Mr. Clegg asks for and is given an exception.)

A. I consider that she would be very competent and capable. I know a great deal about what a mother or a guardian, or what a person, should do for children, and the actual relations existing between them.

(Testimony of John E. Youel.)

Q. What are the relations, so far as you have observed, as between Mrs. Sumi and these two children?

A. Very tender and sympathetic."

Mr. PRATT: That is all.

Mr. CLEGG: No questions. [71]

LOUISE VAN BIBBER,

a witness for appellant, after being duly sworn, testified as follows:

Direct Examination.

By Mr. PRATT: My name is Louise Van Bibber; I live in Fairbanks, Alaska, and have lived here since 1908. Wilhelmina Sumi lived here at that time but I did not meet her until 1910 when I became acquainted with her and afterwards talked with her about the children going to school. I have known her for twenty years or so and have visited at her home at times, every once in awhile I go to her home. I know the two children George Houston Cook and Ruth Marion Cook and I know the relations that exist at this time and have for a long time between the children and Mrs. Sumi. They are very fond of their Grandmother and the Grandmother of the children.

"Q. From what you know of her, what would you say of her fitness to be the guardian and have control of the two children?

(Testimony of Louise Van Bibber.)

Mr. CLEGG: We object on the ground that the question is irrelevant, incompetent and immaterial.

The COURT: She may state whether she thinks Mrs. Sumi is a fit person or not.

(Mr. Clegg asks for and is given an exception.)

A. I certainly think she is a fit person.

Mr. PRATT: Cross-examine.

Mr. CLEGG: No questions.

The COURT: Are you going to contest Mrs. Sumi's fitness?

Mr. CLEGG: I submit it is incompetent, but we do not make any dispute about that."

AGNES HERRING,

a witness for appellant, after being duly sworn, testified as follows, to-wit:

Direct Examination.

By Mr. PRATT: My name is Agnes Herring; I have lived in Fairbanks [72] Alaska for 28 years; I have known Wilhelmina Sumi for 28 years. I know her children and grandchildren. I live one block from their home.

"Q. From what you know of her and of the children, what would you say of her being a fit person to be made guardian of those two child-

(Testimony of Agnes Herring.)

ren and to have their bringing up and educa tion?

(Mr. Clegg objects as incompetent, irrel evant and immaterial. Objection over ruled and Mr. Clegg asks for and is given an exception.)

A. I would think Mrs. Sumi very fit to take care of the children.

Q. What would be your idea of Relatively, now she being the guardian of those two children, and sending them to Coleman, Michigan, to a stranger by the name of Alsie M. Young; what would you say as between those two?

Mr. CLEGG: I object as irrelevant, incompetent and immaterial.

The COURT: I will sustain the objection.

Mr. PRATT: Cross-examine.

Mr. CLEGG: No questions.

Mr. PRATT: These children are here. I ask to bring these children forward and let them testify.

The COURT: I think I will deny that. I think I am going to consider from the present state of things that they will prefer to go to their Grandmother. I think I will accept that as their position. They are quite young.

Mr. PRATT: I couldn't hear that.

The COURT: I think I shall accept as a condition in this proceeding, without any proof, that in their present situation, having lived a

(Testimony of Agnes Herring.)

good deal of the time with their Grandmother, that they have a natural affection for her and would like to stay with her. I think I will accept that as the fact, the situation.

Mr. PRATT: That is all." [73]

WILLIAM J. CAMPBELL,

a witness for Alsie M. Young, Appellee, after being duly sworn, testified as follows, to-wit:

Direct Examination.

By Mr. CLEGG: My name is William J. Campbell, by occupation I am a carpenter and have lived in Fairbanks, Alaska, since 1904 and still reside here. I know Alsie M. Young, of Coleman, Michigan, having visited at his residence there last February. I know his wife and three sons. He has a very fine home. I met his brother and his brother's wife, and his father and mother and a sister. They all appeared to me to be substantial people. Coleman, Michigan is a small town, probably 700 or 800 people. They have a school there; the community surrounding it consists of farms and some oil wells.

"Q. In your judgment would Alsie M. Young be a competent person to have the care and custody of these two children, George Houston Cook and Ruth Marion Cook?

A. Yes sir.

Mr. CLEGG: Cross-examine."

(Testimony of William J. Campbell.)

Cross Examination.

By Mr. PRATT: I went to Seattle last November and met Mrs. Young and she asked me to go over and see Mr. Young because she had made a trip there for the purpose of finding a place for her children. I mean Mayme Helen Young. She asked me to go there and see this Alsie M. Young, Coleman, Michigan and I went. I was there twice and stayed six or seven days in the house with Alsie M. Young and his family. I paid my own expenses there, most of them. Alsie M. Young hauled me from Redmond, Michigan, where I got off the steamer on Lake Michigan and back to Detroit, otherwise I paid my own expenses. That was the only time I ever saw Mr. Young except that I saw him here in Fairbanks between trains. That is practically all I know about him except that I knew from Mayme Helen Young that there was such a man as Alsie M. Young and I have heard him talked about here in Fairbanks for two or three [74] years. I learned about Alsie M. Young and his connections in Michigan by being a guest of his for seven days last Fall.

"Mr. Clegg: I will offer at this time the deposition of

ALSIE M. YOUNG,

in evidence. (Reads) 'Deposition of Alsie M. Young, taken in his own behalf, at Fairbanks, Alaska, on November 15, 1934, before E. T. Wolcott, Notary Public, in the presence of Cecil H. Clegg, Esq, Attorney for Alsie M. Young, Guardian, and Louis K. Pratt, Esq., Attorney for Wilhelmina Sumi, Appellant. Alsie M. Young, being first duly sworn, testified as follows, to-wit:—

Direct Examination by Cecil H. Clegg.

My name is Alsie M. Young; I live in Coleman, Michigan, and by occupation am a Rural Mail Carrier under the post-office department. I received my appointment from the Postmaster General and have been acting in that capacity for 9 years. I carry the mail and deliver it to patrons in the country, starting at 8:00 o'clock in the morning and returning about 1:00 o'clock in the afternoon, the balance of the day I work around the house and grounds. I was born in Coleman, Michigan and have practically lived there all my life, except for 5 years. After I graduated [75] from High School I worked for the telephone company for one year and enlisted in the Army for 14 months during the World War. During my service I was at camps at Chambers, Illinois, Scott Field, Illinois and Rockwell Field, California. I was in the Air Service and enlisted as a Private and was discharged as a 2nd Lieutenant. After my discharge from the Army I was appointed 2nd Lieutenant in the Re-

(Deposition of Alsie M. Young.)

serve Corps and later was promoted to 1st Lieutenant. In 1930 I received a "Rating Certificate", Air Corps, United States Army, good for five years from its date, signed by Lieutenant Miller, Chief of Personnel Division.

(This book was allowed in evidence without objections and was marked Exhibit No. 1 as a part of the witness' deposition.)

My parents have lived in the State of Michigan all of their lives. My Mother and Father are still living there in Coleman. My Mother's age is 69. They live in Coleman, Michigan, a town of about 1000 population. My parents have lived there for 40 years and are American born of Scotch, English and Irish extraction. I have four brothers and one sister; James, 44 years of age, being the oldest. His occupation is that of Telephone Engineer for the Michigan Bell Telephone Company and he is located at Menominee, Michigan. He is a single man and has worked for that company about 20 years. The next oldest brother is William, Wholesale Dealer for the Standard Oil Company at Coleman, Michigan and has occupied that position for about one year, but was for the past 5 years an Inspector for the Michigan Bell Telephone Company. I have another brother, Donald, age 24, a factory employee, located at Detroit and have a sister who lives at Royal Oak Michigan. She is married and older than me. I am 38 years of age, my health and that of my parents is good. My

(Deposition of Alsie M. Young.)

brothers and sister were all raised in the town of Coleman, or vicinity. The climate is moderate in summer and moderate in winter. In winter the temperature would average 28 to 30 above. I would call it a salubrious climate and a healthy one. Coleman is 40 miles from [76] Saginaw, 20 miles from Midland, 20 miles from Mount Pleasant, 200 miles from Menominee, 125 miles from Royal Oak. Midland is a town of 10,000; Saginaw 40,000; Mount Pleasant 10,000. I was married in 1925 at Houghton Lake, Michigan to Katheryn Sutter who is still living and with me at Coleman. We have three boys, 8, 7 and 4 years old. I live in a frame house of 9 rooms which I own and have owned for the past three years. The lot on which the house stands is probably 150 feet square, the title to which is in me. There are on this lot of mine apple trees, lilac trees and a great many other shrubs. The public school which is a grade and high school is one block from my home; has 8 teachers. I was graduated in this school district from the old school house, the present one is a new building. I graduated in 1916. My wife was a graduate of Central State Teachers College and taught school for 6 years. She is now 32 years of age and in good health. Myself and boys are all in good health. I have photographs of my two oldest boys and a snapshot of the youngest boy Tom, 4 years of age. (At this point the photographs and snapshot mentioned by the witness were admitted in evidence

(Deposition of Alsie M. Young.)

and marked as Exhibit No. 3. They showed three bright, intelligent looking and neatly dressed boys.) My house is completely furnished.

"Q. Are you able to take care of two extra children?

A. Yes.

Q. These two children of Mayme Helen Young, known as George Houston Cook and Ruth Marion Cook?

A. Yes.

Q. In your home?

A. Yes.

Q. Is it possible for yourself and your wife to look after them and their care and comfort?

A. Yes.

Q. Do you apprehend any difficulty in doing so?

A. No.

Q. Did you know Mayme Helen Young in her lifetime?

A. Yes.

Q. When did you get acquainted with her?

A. I don't know the [77] year. I know how long it was after her marriage to my brother.

Q. What was the occasion of that last acquaintance? How did you come to get acquainted with her?

A. She and Ed visited with us back home.

(Deposition of Alsie M. Young.)

Q. Was that the year he won the ice pool or part of it?

A. Yes.

Q. Was that in the spring or summer of the year that he visited you?

A. In the summer. It was in June.

Q. For how long?

A. About four weeks.

Q. Did they stay at your house, that is, Mr. Young and Mayme Helen Young, his wife?

A. They stayed at our home possibly a week of that time and the rest of the time they spent at the Lake and we were there at the Lake with them.

Q. What Lake is that?

A. Houghton Lake.

Q. Did you afterwards see Mayme Helen Young in her lifetime in Michigan?

A. Yes.

Q. At your home?

A. Yes.

Q. When was that?

A. About ten days after my brother's death.

Q. You mean George Edward Young?

A. Yes.

Q. Where did she come from when she visited you at that time?

A. Seattle.

Q. Where had she been in Seattle, if you know?

(Deposition of Alsie M. Young.)

A. At the hospital.

Q. And how long did she stay visiting you at that time?

A. She was back and forth between our home and Detroit at my sisters.

Q. You mean at Royal Oak?

A. Yes.

Q. Is that the same place as Detroit?

A. Yes. It is a suburb of Detroit.

Q. Is that where your sister lives?

A. Yes.

Q. She was visiting back and forth?

A. Yes. About thirty days.

Q. Visited you and your sister and your wife?

A. Yes.

Q. How often was she at your home during that period?

A. About four times.

Q. How long would she stay ordinarily?

A. A day or two days. [78]

Q. When she returned to Seattle you never saw her again?

A. No.

Q. I want to ask you about the sanitation conditions in Coleman where you live. Are they ordinary sanitation requirements of towns of that size?

A. Yes.

(Deposition of Alsie M. Young.)

Q. Has there ever been any considerable epidemic or disease——

(Interrupted) A. No.

Q. ——ravaging the town?

A. No.

Q. Is there a good water supply there?

A. Yes.

Q. Do you have your own water supply?

A. Yes.

Q. In your house?

A. Yes.

Q. What sort of heating appliances do you require there, if any?

A. Coal stoves.

Q. Is your house well and comfortably heated?

A. Yes.

Q. How far are you from Lake Michigan there?

A. A hundred miles.

Q. Is there any line of railroad going through Coleman?

A. Yes.

Q. What is it?

A. The Pierce Marquette.

Q. Do you have any airplane connection there?

A. No.

Q. How are you fixed for churches?

(Deposition of Alsie M. Young.)

A. There are about four churches in the town.

Q. What denominations are they?

A. Methodists, the Saints, the Catholic—(Interrupted)

Q. Saints?

A. Latter Day Saints and Roman Catholics.

Q. What denomination do you adhere to, if any?

A. Episcopalian.

Q. What denomination, if any, does your wife belong to?

A. The same.

Q. Is there any Episcopal Church in the town of Coleman at the present time?

A. No.

Q. Do you send your children to any Sunday school?

A. Yes.

Q. Which one?

A. The Methodist.

Q. Do they go and attend regularly?

A. Yes.

Q. All of them?

A. Yes." [79]

The Highschool building has a gymnasium where the children play basketball and such games in winter time. They have a Physical Instructor, that is, one of the teachers does that as a part of

(Deposition of Alsie M. Young.)

the regular instruction. The playground is open to the school children and is about 300 feet square. It is equipped with merry-go-round, giant slides, swings and all such recreation equipment. We have a doctor in town, a young man. He has a good general practice and has a good standing. If necessary we can go to some of the larger cities, and we do so at times, for medical assistance. The roads leading to and from Coleman are good paved roads suitable for automobiles. I have an automobile of my own. I should say that the living conditions in Coleman are very good. Living expenses are very low. Coleman is surrounded by a farming community where potatoes, corn, beans, hay and all dairy products are produced and grown. You might call it a general farming community. There are dairies adjacent to the town of Coleman which furnish pure milk to the people living in that town. I belong to the American Legion and Masonic organizations and at present am Commander of the American Legion at that point, was elected last October and will continue in office for one year. I have belonged to the Masonic organization since 1918. I have never held any position with the city government for the reason that postal employees are not allowed to go into anything of that kind. My father was a mail carrier and carried on the same route that I carry for 21 years. My income as rural mail carrier is $230.00 per month net. The town of Coleman is more than 100 miles from Fair-

(Deposition of Alsie M. Young.)

banks. I left there October 28, 1934 and arrived here November 11th. I stopped one day in Seattle, came by ocean steamer to Seward and from there to Fairbanks by rail. Donald Young is the son of Mayme Helen Young and my brother Ed. Young. I saw the child at Menominee. With the exception of the technical training that I had while connected with the Aviation branch of the United States Army during the World War, I never had any other education after graduating from the high-school [80] in Coleman.

"Q. Are you willing now to undertake the responsibility that will devolve upon you under the law as guardian of these two children of Mayme Helen Young,—George Houston Cook and Ruth Marion Cook?

A. Yes.

Mr. CLEGG: You may take the witness."

Cross Examination.

By Mr. PRATT: I never saw Mayme Helen Young until she came there on visits to Michigan. I have never been in Alaska before. Mayme Helen Young was there in Michigan about one month each time. She was at my house a week or ten days each time, something like that. She had with her one child, her son Donald, Ed. Young's child but didn't have the Cook children. I knew she had married George Cook before she married my brother Ed.

(Deposition of Alsie M. Young.)

"Q. What occasioned you to come here, Mr. Young? What is your purpose in being here?

A. I came here to take custody of the children.

Q. To take custody of the children?

A. Yes.

Q. And you are going back?

A. Yes.

Q. Tomorrow morning?

A. Yes.

Q. Without them?

A. Yes.

Q. Who notified you or suggested that you come here?

A. Joe Crosson and my attorney, Mr. Clegg.

Q. Now, what is the value of your home, just in round numbers, a fair estimate?

A. Two thousand dollars.

Q. And your automobile?

A. Three hundred and fifty.

Q. Have you any other property?

A. No, except furniture and things like that.

Q. Household furniture?

A. Yes.

Q. Would the two thousand dollars be the house and the furniture or without the furniture?

A. Without the furniture. The furniture is valued at about fifteen hundred. [81]

(Deposition of Alsie M. Young.)

Q. You haven't got any other property?

A. No."

I have read the will of Mayme Helen Young and am familiar with the fact that the Executor of her Will returned an Inventory showing that Mayme Helen Young left property which would belong to George Houston Cook, Ruth Marion Cook and the little boy Donald Young. My brother James M. Young told me that Mayme Helen Young in her lifetime gave him $5000.00 in cash here at Fairbanks but I never knew that she gave him a check on a Detroit bank for $3000.00. I never heard of that. The $5000.00 I know of. My entire round trip expenses have been paid by Joe Crosson of Fairbanks, Alaska. I have never seen the two children George Houston Cook and Ruth Marion Cook.

"Q. You say you are willing to take them and be their guardian until they are twenty one years old and take them back to Coleman, Michigan, and take them into your own family and educate them and look after them and take care of them?

A. Yes.

Q. You say that?

A. Yes.

Q. Isn't this true: That it is because you know that they have got money and the equivalent of money amounting to twenty five or thirty thousand dollars? Isn't that the reason you are willing?

(Deposition of Alsie M. Young.)

A. No.

Q. Has that got anything to do with it at all?

A. No.

Q. Suppose you knew they didn't have anything at all, would you take them out of this country and take them clear back there and do all that for them in your own home?

A. Yes. That is why I promised to do it.

Q. What reason can you give why you would do such a thing?

A. Because Mayme Helen Young asked me.

Q. Because Mayme Helen Young asked you?

A. She didn't ask me, but she was worried about things like that that might happen.

Q. Did she ask you to be a guardian of her two children?

A. No.

Q. But you now are willing to be guardian?

Mr. CLEGG: I would like to call the witness's attention to the [82] terms of her will when he answers that question.

A. Why, I thought you (To Mr. Pratt) meant that she asked me personally fact to face. She asked me in the will to be the guardian of these children.

Mr. PRATT: Q. That is what you are talking about.

A. Yes.

(Deposition of Alsie M. Young.)

Q. She didn't ask you personally?

A. No.

Q. You mean that she appointed you guardian?

A. Yes.

Q. She never said anything to you on the subject?

A. No.

Q. Because she made the will months after you saw her the last time, didn't she?

A. Yes.

Q. You know, do you not, that your brother James M. Young had much to do with the making of that will, don't you?

A. I don't know.

Q. Hadn't he told you so?

A. No.

Q. Did you ever talk with him about it?

A. Yes.

Q. Have you read that will?

A. Yes.

Q. Don't it look on the face of it like a very remarkable document?

A. He told me that that was her own idea.

Q. I asked you if it didn't look like a very remarkable document in view of the fact that you people are strangers to her and had lived in Michigan all their lives and she lived all her life in Alaska. Didn't that look strange; a strange will to you?

(Deposition of Alsie M. Young.)

A. We are not strangers to her.

Q. Well, you are almost strangers, aren't you?

A. No. We are relatives to her.

Q. Personally you never had any contact with her or talked with her except on those two occasions, did you?

A. No.

Q. You have never seen the children in your life, have you?

A. No.

Q. Of course, your wife and children have never seen them either, have they?

A. No.

Mr. PRATT: That is all." [83]

Redirect Examination.

By Mr. CLEGG: During my cross-examination I was interrupted, I was going to and intended to say that Mayme Helen Young when she was talking to me in Michigan was worried about her own financial condition whether she could take care of her children at some future time, then I offered her my services, myself, my wife, my home to take care of the children if that event ever occurred. That conversation occurred October, 1933, when she was there at my home town, Coleman, Michigan, shortly after her husband's death.

(Deposition of Alsie M. Young.)

Re-cross Examination.

By Mr. PRATT: Q. She hadn't at that time collected her insurance and employee's compensation, had she?

A. I don't think so. She didn't mention it.

Q. Didn't you know she hadn't collected it at that time; that that was what she was worried about?

A. Possibly.

Q. You knew that Ed. Young had twenty thousand dollars in life insurance?

A. I didn't know how much he had. I knew of ten thousand that he had.

Q. He may have had ten thousand more, as far as you knew?

A. Yes.

Q. Don't you think he did have ten thousand dollars more?

A. I found out later that he had more.

Q. You know now that he had twenty thousand?

A. I don't know.

Q. You also know that she collected seventy five hundred dollars as employee's compensation under the compensation Act of Alaska?

A. No. I don't.

Q. Did you ever hear of that?

A. I have heard of it but I didn't know the amount or what funds it came out of.

(Deposition of Alsie M. Young.)

Q. You know she collected whatever the law gave her for the death of her husband. You knew that?

A. I knew it when?

Q. You have known it for some time.

A. Yes.

Q. You knew when she was there in Michigan that she expected to do that or hoped that she could, didn't you?

A. Yes. [84]

Q. You heard of that since?

A. I heard of that since.

Mr. PRATT: That is all."

JOE CROSSON,

a witness for Appellee, after being duly sworn, testified as follows, to-wit:

Direct Examination.

By Mr. CLEGG: My name is Joseph Crosson. I live in Fairbanks, Alaska, and by occupation am a pilot and Operating Manager of the Pacific Alaska Airways. I was acquainted with George Edward Young during his lifetime. He was flying for the same company, and he and myself have been in their employ and flying planes for the past five years. I was acquainted with his wife, Mayme Helen Young. I knew both of them very well. I

(Testimony of Joe Crosson.)

know Alsie M. Young of Coleman, Michigan, got acquainted with him in October, or November, 1933, at Detroit, Michigan. I went to Coleman, Michigan and was at the home of Alsie M. Young for two days and met his wife and children. They have a very nice home. I couldn't say just how well but they probably live much more comfortable than the average person here in Fairbanks. They have some conveniences that they don't have here. Coleman is a very small town, it is not large at all, it is a sort of modest little town, I don't know just how to express it. It is surrounded by farming country. I saw a schoolhouse there, probably a block from Alsie M. Young's residence.

"Q. What estimate did you form of Alsie M. Young as a father to take care of children?

A. Well, they gave me the impression that evidently they were very competent parents.

Q. What estimate did you form of Mrs. Young as to the care and custody of children?

A. Very good. Their children were very well behaved and their home well kept.

Q. Did you meet Alsie M. Young's relatives there.

A. I did.

Q. How many?

A. His father and mother and his brother William Young and his wife.

Q. How far does Alsie M. Young live from where he lives? [85]

(Testimony of Joe Crosson.)

A. Possibly three blocks or so.

Q. They have a comfortable home there?

A. Very comfortable.

Q. Is it what you would consider a nice location for a small town?

A. It is.

Q. And a good place to raise children?

A. It would appear to me to be very good.

Mr. CLEGG: Cross-examine.

Cross Examination.

By Mr. PRATT: Q. Mr. Crosson. You are taking a good deal of interest in this matter, and have, haven't you?

A. You might say I have.

Q. You got yourself appointed guardian once, didn't you?

A. I did, for a purpose.

Q. You paid Alsie M. Young's expenses from Coleman, Michigan and back lately, didn't you?

A. I did.

Q. All you know about Mr. Alsie M. Young and his family is what you learned by being there a couple of days. Is that it?

A. Not necessarily. No.

Q. Did you ever see them before? Were you ever there before or since?

A. No. But I have heard a great deal of them.

(Testimony of Joe Crosson.)

Q. I am talking about what you know yourself. You have never been in Coleman but two days in your life, have you?

A. Two days is all.

Mr. PRATT: That is all.

Mr. CLEGG: We rest.

Mr. PRATT: Mrs. Sumi will rest.

The foregoing was all the evidence seen and heard by the Court at the trial of said appeal. [86]

On April 16, 1935, Hon. E. Coke Hill, Judge of said Court rendered

HIS ORAL OPINION

as follows:

In the matter of the Estate of Mayme Helen Young, deceased, Number 3806, which is here upon exceptions to an order of the Commissioner, those exceptions involving questions of jurisdiction and involving the question of the fitness of Alsie M. Young to be guardian, I think that the law requires me to respect the will unless I am able definitely to say from the proofs introduced before me that it will be to the disadvantage of the children. That I have the power to set aside the provisions of the will if I am convinced that it is to the disadvantage of the children, I have no doubt. But there is nothing in the evidence which shows that to me. So far as the evidence goes, he is a

perfectly competent and fit person to have charge of the children.

I have delayed deciding this for a long time because I was moved by sympathy for the grandmother. I thought it would not hurt the children at all, and it would be a kindness to her, to let her have them the rest of the winter. The school term is about to end and my suggestion is that they be allowed to stay here until the school term is over if they are going to school, and then that Alsie M. Young take charge of them. It is a hard thing to take them away from the grandmother, but I see no alternative unless I violate what I really believe, and that is that Alsie M. Young is a perfectly competent and fit person. I am not finding that the grandmother is not a fit person. I am simply being governed by that which I think is compulsory—the provision of the will. As to the technical objections: That is, that the matter is not entitled in the proper way, I find decisions treating of just this sort of matter where they are entitled as this is, and I find at least one or two statements in discussing that, that it makes very little difference. It may be approached from either [87] end. As to the matter of the non-residence of Alsie M. Young, I am inclined to follow the ruling in the Estate of Walsh, or Guardianship of Walsh,—I forget which it is,—in the New York Supplement. It is cited in Mr. Clegg's brief. Therefore, I shall sustain the ruling of the Commissioner.

You may prepare your findings and judgment to that effect. [88]

[Title of Court and Cause.]

CERTIFICATE AND ORDER.

Judge E. Coke Hill who tried the above cause, having been succeeded by me, and the evidence in said trial having been taken in stenographic notes by the official Court Reporter, and by him transcribed, and transcript filed in this cause and being before me, and I being fully satisfied that I can allow a true bill of exceptions in said cause,

I, Harry E. Pratt, Judge of said Court, hereby certify that the above and foregoing Bill of Exceptions, pages 1 to 23 inclusive, contains all the evidence seen and heard by the Court at the hearing and trial of the appeal herein, as the same was introduced by Wilhelmina Sumi, Petitioner and Appellant, and Alsie M. Young, Petitioner and Appellee, including the exceptions taken to rulings of the Court during the progress of the trial; also that said Bill of Exceptions sets forth said evidence in condensed and narrative form, save as a proper understanding of the questions presented required that parts of it be set forth otherwise, in conformity to Rule 10 of the United States Circuit Court of Appeals, 9th Circuit.

AND IT THEREFORE settle, allow and sign the same as and for a true Bill of Exceptions and the Clerk of this Court is hereby ordered to refile

the same and when so refiled it shall become and be a true Bill of Exceptions of all matters [89] and things occurring at said trial not otherwise appearing of record and the same is hereby made a part of such record.

Dated at Fairbanks, Alaska, this 25th day of July, 1935.

HARRY E. PRATT
District Judge.

Received copy of the foregoing this ..... day of July, 1935.

CECIL H. CLEGG
Attorney for Alsie M. Young.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Jul 25 1935. Alton G. Nordale, Clerk.

Entered in Court Journal No. 19, Page 438. [90]

[Title of Court and Cause.]

ORDER EXTENDING THE TIME WITHIN WHICH TO FILE AND DOCKET CAUSE ON APPEAL.

WHEREAS, Judge E. Coke Hill, who allowed the appeal in the foregoing case, has been succeeded by the undersigned Harry E. Pratt as District Judge of the Territory of Alaska, Fourth Division, and

This matter coming on for hearing upon the motion of Wilhelmina Sumi, Appellant, for an order extending the time within to file and docket the record herein on appeal with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, and it appearing to the satisfaction of the Court, that the time allowed by law and the order of this Court allowing said appeal and the order extending the time heretofore made is insufficient for the purpose, and that the Appellant desires an extension of time until and including October 1, 1935, within which to file and docket said cause, and all and singular the matters being fully considered by the Court,

IT IS ORDERED that the Appellant be and is hereby given and granted until and including October 1, 1935, within which to file and docket the record on appeal with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

Dated, Fairbanks, Alaska, July 25, 1935.

HARRY E. PRATT
District Judge.

Entered in Court Journal No. 19, Page 439.

[Endorsed]: Filed Jul. 25, 1935. [91]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT ON APPEAL.

TO THE CLERK OF SAID COURT:

Please prepare and certify to, a transcript of the record and files in the above-entitled matter as follows:

1st. The transcript of the proceedings in the Probate Court on which the appeal is based.

2nd. The Notice of Appeal and Exceptions of Wilhelmina Sumi. Also Motion to Dismiss Appeal.

3rd. The Findings of Fact and Conclusions of Law.

4th. The Objections thereto by Wilhelmina Sumi and her Proposed Findings of Fact and Conclusions of Law.

5th. The Motion to set aside the Findings of Fact and Conclusions of Law and grant a new trial.

6th. The final Order and Judgment.

7th. All other journal entries made during the progress of the case.

8th. The Bill of Exceptions complete.

9th. All papers connected with the appeal, except that the Citation on Appeal, the Stipulation as to printing record and place of hearing and the two extensions of time to file record in the C. C. A., 8th Cir. (4 papers) are original papers and go forward to the Appellate Court at San Francisco properly identified by you. If these 4 papers have been recorded in your office, they need not be incorporated in the transcript, because to do so would

be a duplication. The caption of each of these papers is "C. C. A., 9th Cir.",

10th. A copy of this Praecipe.

Dated at Fairbanks, Alaska, this 2nd day of August, 1935. [92]

LOUIS K. PRATT
Attorney for Wilhelmina Sumi.

Received a copy of the foregoing Praecipe this 2d day of August, 1935.

CECIL H. CLEGG
Attorney for Alsie M. Young.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Aug 2 1935. Alton G. Nordale, Clerk, by E. A. Tonseth, Deputy. [93]

[Title of Court and Cause.]

CERTIFICATE OF CLERK OF DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
Territory of Alaska,
Fourth Judicial Division—ss.

I, ALTON G. NORDALE, Clerk of the District Court, Territory of Alaska, Fourth Judicial Division, do hereby certify that the foregoing consisting of 93 pages, constitutes a full, true and correct transcript of the record on Appeal in Cause No. 3806 entitled: In the Matter of the Estate of Mayme Helen Young, Deceased, and was made pur-

suant to and in accordance with the Praecipe of the Petitioner and Appellant, Wilhelmina Sumi, filed in this action, and by virtue of the said Appeal and Citation issued in said cause, and is the return thereof in accordance therewith, and

I do further certify that the Index thereof, consisting of page "a" is a correct index of said Transcript of Record, and that the list of Attorneys, as shown on page "b", is a correct list of the attorneys of record; also that the cost of preparing said transcript and this certificate, amounting to $26.85, has been paid to me by counsel for Appellant in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 11th day of September, 1935.

[Seal] ALTON G. NORDALE
Clerk of the District Court, Territory of Alaska, Fourth Division
By E. A. TONSETH,
Chief Deputy. [94]

[Title of Court and Cause.]

REQUESTED ADDITIONS TO "PRAECIPE FOR TRANSCRIPT ON APPEAL" MADE BY ALSIE M. YOUNG, GUARDIAN.

To the Clerk of the Above Entitled Court:

Please prepare and certify to a transcript of the records and files in the above entitled matter as follows:

1. The Last Will and Testament of Mayme Helen Young, deceased, the same having been referred to, incorporated in, and made a part of the original petition filed by Alsie M. Young, Guardian, in the Probate Court for the Fairbanks Precinct, Fourth Division, Alaska, entitled "Petition of Testamentary Guardian for Order Fixing Amount of Bond", said petition being the initial document filed in said Court and upon which the Judgment and Order was rendered in the District Court for the Territory of Alaska, Fourth Judicial Division, on which this appeal is based, a copy of which said Last Will and Testament certified by the United States Commissioner and ex officio Probate Judge for the Fairbanks Precinct, Fourth Division, Alaska, is attached hereto.

2. The proposed Findings of Fact and Conclusions of Law lodged with the Clerk of said Court by Alsie M. Young, Guardian, and marked "Lodged April 19, 1935".

3. These Requested Additions to "Praecipe for Transcript [95] on Appeal" made by Alsie M. Young, Guardian.

Dated at Fairbanks, Alaska, August 7th, 1935.

CECIL H. CLEGG

Attorney for Alsie M. Young, Guardian of the Persons of Ruth Marion Cook and George Houston Cook, Minors.

Service of the foregoing Requested Additions to Praecipe acknowledged August 7th, 1935, by receipt of a copy thereof.

LOUIS K. PRATT
Attorney for Wilhelmina Sumi

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Aug 7 1935. Alton G. Nordale, Clerk, by E. A. Tonseth, Deputy. [96]

WILL.

I, Mayme Helen Young, residing at Fairbanks, Territory of Alaska, being of sound and disposing mind and memory, and not acting under menance, duress, fraud, or undue influence of any person whomsoever, do make, publish, and declare this my last will and testament, and do hereby expressly revoke all other and former wills and codicils by me made.

(1) I hereby direct my executor, hereinafter named, to pay all my just debts and funeral expenses, as soon after my demise as can be lawfully and conveniently done.

(2) I hereby declare that I am a widow and that I have had four issue of my body, whose names are: Mayme Gertrude Cook, aged twelve years; George Houston Cook, aged nine years; Ruth Marion Cook, aged eight years; and Donald Edward Young, aged four years.

(3) I hereby give, devise, and bequeath to Kate Young, of Coleman, Michigan my marten skins.

(4) I hereby give, devise, and bequeath to my daughter, Ruth Marion Cook, my set of silverware and my silver fox skin.

(5) I hereby give, devise, and bequeath to my daughter, Mayme Gertrude Cook, my white fox skin.

(6) I hereby give, devise, and bequeath to Harry Dershimer, of Albion, Penn., as trustee, the sum of one thousand dollars, to be held in trust by him as such trustee, for my daughter, Mayme Gertrude Cook, and when my said daughter shall attain the age of twenty one years, said trustee shall pay over and transfer to her said one thousand dollars.

(7) I hereby give, devise, and bequeath all the balance of my estate, both real and personal, of whatsoever kind or character and wheresoever situated, to James M. Young, as trustee, to be held by him as such trustee, for the benefit of my son, George Houston Cook, my daughter, Ruth Marion Cook, and my son, Donald Edward Young, and to be held in trust during the time and for the objects and purposes hereinafter set forth:

(a) From the gross income received or derived from the trust estate there shall first be paid and discharged all taxes, assessments, costs, charges, and expenses incurred in the care, administration, and protection of the trust estate and the protection of this trust and its defense against legal or equitable

attack of any person, both during and after probate administration upon my estate.

(b) The said trustee may apply the whole or any part of the annual net income toward the maintenance, education, or benefit, equally, of my said three children, George Houston Cook, Ruth Marion Cook, and Donald Edward Young.

(c) When my said children, George Huston Cook, Ruth Marion Cook, and Donald Edward Young, shall attain the age of twenty one years, the said trustee shall pay over and transfer to each of said children one third of my said estate, in whatever form the same may be at the time. [97]

(d) In the event of the demise of any of my said children before he or she attains the age of twenty one years, the said trustee, James M. Young, shall give and divide his or her interest equally among my children then living.

(8) I hereby authorize and empower my said trustees herein named, to invest and re-invest the trust funds hereinbefore provided for, in any securities which said trustees deem best, and to change or vary investments from time to time as they may deem best.

(9) I hereby nominate, constitute, and appoint James M. Young as guardian of my said son, Donald Edward Young.

(10) I hereby nominate, constitute, and appoint Harry Dershimer as guardian of my daughter, Mayme Gertrude Cook.

(11) I hereby nominate, constitute, and appoint Alsie Young as guardian of my children, George Houston Cook and Ruth Marion Cook.

(12) I hereby nominate, constitute, and appoint C. W. Tibbitt, of Fairbanks, Territory of Alaska, as executor of this my last will and testament, without bonds, and I hereby give him power to sell all or any part of my estate, either real or personal, at private sale, without order of Court, with the exception of the stock which I now hold in the Hi-Yu Mining Company, which said stock is to be kept by him as such executor and turned over and delivered to such trustee hereinabove named, James M. Young. All the rest of my estate, consisting of real and personal property, is to be sold by said executor and converted into money and said money delivered to the said trustees hereinabove named, as hereinbefore provided.

In Witness Whereof, I have hereunto set my hand, on this the twenty first day of March, A. D. one thousand nine hundred thirty four.

MAYME HELEN YOUNG

The foregoing instrument, consisting of two pages besides this, was, at the date thereof, by the said Mayme Helen Young signed and published as, and declared to be, her last will and testament, in the presence of us, who, at her request and in her presence and in the presence of each other, have subscribed our names as witnesses thereto.

F. de la VERGNE M. D.
Residing at Fairbanks, Alaska
DAVIS RUNYAN
Residing at Fairbanks, Alaska. [98]

United States of America
Territory of Alaska
Fourth Judicial Division
Fairbanks Precinct—ss.

I, WILLIAM N. GROWDEN, United States Commissioner and ex officio Judge of the Probate Court in and for the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, do hereby certify that the annexed and foregoing is a full, true and correct copy of the original Will of Mayme Helen Young on file in cause No. 549 in said Probate Court for the Precinct aforesaid, entitle: "In the Matter of the Estate of Mayme Helen Young, deceased," and now remaining among the records of said Probate Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Fairbanks, Alaska, this 6th day of August, A. D. 1935.

[Seal of Probate Court]

WILLIAM N. GROWDEN
United States Commissioner and ex officio Probate Judge, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska. [99]

[Title of Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

BE IT REMEMBERED That on the 2nd day of January, 1935, said day being one of the regular Court days of the General January, 1934, term of the above entitled Court, there came on regularly to be heard the appeal and exceptions of Wilhelmina Sumi from the order and judgment made and entered by the Honorable George W. Albrecht, Commissioner and ex officio Probate Judge of the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, sitting as such, on the 26th day of October, 1934; that said order was made upon the petition of Alsie M. Young, testamentary guardian under the terms of the last will and testament of Mayme Helen Young, deceased, of her minor children, George Houston Cook, age nine years, and Ruth Marion Cook, age eight years, asking that his bond as such testamentary guardian be fixed by said Probate Court and that Letters of Guardianship issue to him by reason of said testamentary appointment, to which said petition said Wilhelmina Sumi had filed a protest requesting said Probate Court to cancel and revoke the testamentary appointment of said Alsie M. Young as such guardian and that he be not allowed to qualify by furnishing the bond required by statute and in the amount determined by said Probate Court; and said Court having examined the transcript of said

proceedings upon said hearing before said Probate Court now on file herein, and having examined the records of said Probate Court in the above entitled proceedings and having taken, heard and considered certain oral testimony on behalf of said appellant, Wilhelmina Sumi, and in behalf of Alsie M. Young, guardian aforesaid, the respective parties being represented herein by Louis K. Pratt, as attorney for said Wilhelmina Sumi, and by Cecil H. Clegg, as attorney [100] for Alsie M. Young, guardian aforesaid, this Court, being fully advised in the premises, does now make and enter herein the following

FINDINGS OF FACT.

I.

That Mayme Helen Young, prior to the 4th day of May, 1934, was a resident and inhabitant of the town of Fairbanks, Fourth Judicial Division, Territory of Alaska; that she died on said day in said town of Fairbanks; that at the time of her death she was the widow of George Edward Young, who died on September 20th, 1933; that she left surviving her, amongst others, two minor children, to wit, George Houston Cook, age nine years, and Ruth Marion Cook, age eight years, who were and are the children of said Mayme Helen Young and a former husband, George Cook; that said George Cook died at Anchorage, Alaska, on or about the 28th day of May, 1926, and that he had not, by last will and testament or otherwise, appointed a guard-

ian for either of said children; and that each of said minor children is now, and was at the date of said hearing in said Probate Court, living in the town of Fairbanks, Alaska, in the possession and custody of their grandmother, Wilhelmina Sumi, appellant herein.

II.

That prior to her death said Mayme Helen Young did, on March 21st, 1934, make, execute, publish and declare her last will and testament in writing, which said last will and testament was, on the 7th day of May, 1934, duly admitted to probate in the Probate Court, Fairbanks Precinct, Fourth Division, Alaska; that by the terms thereof the said testatrix, Mayme Helen Young, nominated, constituted and appointed Alsie Young as guardian of said minor children, George Houston Cook and Ruth Marion Cook, and nominated, constituted and appointed James M. Young as Trustee of all the real and personal property of her estate, with the exception of certain minor bequests, for the use and benefit, amongst others, of said George Houston Cook and Ruth Marion Cook, minor children involved in this proceeding. [101]

III.

That said Alsie Young, nominated and appointed guardian of each of said children aforesaid by said last will and testament, is the same person named as Alsie M. Young.

IV.

That said Alsie M. Young, by his said petition to the said Probate Court aforesaid, signified his acceptance of his appointment as guardian under the terms of the will of said Mayme Helen Young hereinabove mentioned, and requested said Probate Court for the Fairbanks Precinct, Fourth Division, Alaska, to designate the amount of his bond as such guardian and prayed that, upon compliance by him with the order of said Probate Court aforesaid fixing the amount of his bond as such guardian and its approval and acceptance by said Probate Court, Letters of Guardianship issue to him as such guardian under the hand and seal of said Probate Court.

V.

That said Probate Court did, by order duly made and entered on the 26th day of October, 1934, fix and determine the amount of bond of said Alsie M. Young as such guardian aforesaid in the sum of $3,000.00, and confirmed his appointment as such guardian under said will of Mayme Helen Young, deceased; that said Alsie M. Young, as such guardian aforesaid, furnished and filed with said Probate Court a bond in said sum with sufficient sureties and the same was duly approved by said Probate Court; that thereafter said Probate Court did issue to the said Alsie M. Young Letters of Guardianship authorizing him to perform all the duties required by law as guardian of the person of each of said minor children aforesaid; that thereafter

said Alsie M. Young made and filed with said Probate Court aforesaid his Oath of Office as such guardian in due and proper legal form; and that said Alsie M. Young is in all respects a fit, proper and competent person to act as such guardian and, as such guardian, he is entitled to the sole and exclusive possession and custody of each of said minor children, George Houston Cook and Ruth Marion Cook. [102]

VI.

That each and all of the exceptions taken, made and filed by the appellant, Wilhelmina Sumi, aforesaid to the order of said Probate Court is and are without merit in point of fact.

Dated at Fairbanks, Alaska, this ..... day of April, 1935.

.....

District Judge

And from the foregoing Findings of Fact, this Court does now make and enter herein the following

CONCLUSIONS OF LAW.

I.

That the order and judgment of the Probate Court, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, made and entered in the above entitled proceeding on the 26th day of October, 1934, fixing and determining the amount of the bond of Alsie M. Young as guardian of the persons of George Houston Cook and Ruth Marion

Cook, minor children of Mayme Helen Young, deceased, at the sum of $3,000.00 and confirming his appointment as such guardian under the last will and testament of said Mayme Helen Young, deceased, and authorizing the issuance to said Alsie M. Young of Letters of Guardianship of the person of each of said children, was regular, valid and legal in all respects and was entirely within the jurisdiction of said Probate Court issuing the same; and that the exceptions of the appellant, Wilhelmina Sumi, filed herein should be denied and disallowed.

Dated at Fairbanks, Alaska, this ..... day of April, 1935.

.....

District Judge

Receipt of a copy of the foregoing Findings of Fact and Conclusions of Law acknowledged April 18th, 1935.

LOUIS K. PRATT
Attorney for Wilhelmina Sumi, Appellant.

[Endorsed]: Lodged Apr 19 1935. N. H. Castle, Clerk, by E. A. Tonseth, Deputy. [103]

[Title of Court and Cause.]

CERTIFICATE OF CLERK OF DISTRICT COURT TO TRANSCRIPT OF RECORD REQUESTED BY APPELLEE.

I, Alton G. Nordale, Clerk of the District Court, Territory of Alaska, Fourth Judicial Division, do hereby certify that the foregoing, consisting of nine (9) pages, constitutes a full, true and correct transcript of the record on Appeal in cause No. 3806, entitled: In the Matter of the Estate of Mayme Helen Young, Deceased, and was made pursuant to and in accordance with the request of Appellee Alsie M. Young for additions to "Praecipe for Transcript on Appeal", and was made pursuant to and in accordance with said "counter Praecipe" and is the return thereof in accordance therewith, and

I do further certify that the cost of preparing said additions to said Transcript of Record and this certificate, amounting to $1.70, has been paid to me by counsel for Appellee in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 11th day of September, 1935.

[Seal] ALTON G. NORDALE
Clerk of the District Court, Territory of Alaska, Fourth Division,
By E. A. Tonseth,
Chief Deputy. [104]

[Endorsed]: No. 7992. United States Circuit Court of Appeals for the Ninth Circuit. Wilhelmina Sumi, Appellant, vs. Alsie M. Young, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Alaska, Fourth Division.

Filed September 21, 1935.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 7992

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

WILHELMINA SUMI,

Appellant,

vs.

ALSIE M. YOUNG,

Appellee.

Upon Appeal from the District Court of the United States for the Territory of Alaska, Fourth Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

In the United States Circuit Court of Appeals for the Ninth Circuit.

[Title of Cause.]

MOTION TO DISMISS APPEAL.

Comes now appellee, Alsie M. Young, and respectfully moves this Honorable Court to dismiss the appeal herein upon the ground and for the reason that said Court has no jurisdiction to entertain the same, in that:

1. No question arises under or involves the Constitution of the United States of America.

2. No question arises under or involves any statute or treaty of the United States or any authority exercised thereunder.

3. No monetary value, exclusive of interest and costs, exceeding One Thousand Dollars ($1,000.00) is in controversy herein.

4. The appellant herein was not a party in the Probate Court, Fairbanks Precinct, Alaska, where this proceeding originated, and has no standing in this Court.

Points and authorities, together with this motion, will be included under same cover as printed brief for appellee, preceding brief on the merits.

Respectfully submitted,

CECIL H. CLEGG and

JOHN L. McGINN,

Attorneys for Alsie M. Young, Appellee.

Due service of the foregoing Motion to Dismiss Appeal, and receipt of a copy thereof, is acknowledged March 4th, 1936, at Fairbanks, Alaska.

LOUIS K. PRATT,
Attorney for Appellant.

[Endorsed]: Filed Mar. 20, 1936.

United States Circuit Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Wednesday, April 15, 1936.

Before: WILBUR, GARRECHT and MATHEWS, Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION.

ORDERED motion of appellee to dismiss appeal and cause on merits argued by Mr. Herman Weinberger, counsel for appellant, and by Mr. Robert W. Jennings, counsel for appellee, and submitted to the court for consideration and decision, with leave to file further briefs 15x15.

United States Circuit Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Friday, May 8, 1936.

Before: WILBUR, DENMAN and HANEY, Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE.

By direction of the court, ORDERED that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion filed.

[Title of Court and Cause.]

OPINION.

Upon Appeal from the District Court of the United States for the Territory of Alaska, Fourth Division.

Before: WILBUR, GARRECHT and MATHEWS, Circuit Judges.

MATHEWS, Circuit Judge:

Appellee filed with the United States Commissioner[1] for Fairbanks Precinct, Territory of Alaska,

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[1]In Alaska, United States Commissioners are ex-officio probate judges. Act of June 6, 1900, c. 787, §6, 31 Stat. 323, 48 USCA §108; Compiled Laws of Alaska, 1933, §1109.

a verified petition showing that, by the last will of Mayme Helen Young, deceased, appellee had been appointed as testamentary guardian of her two minor children, and praying for confirmation of his appointment and for letters of guardianship. Appellant, the grandmother of the minors, filed a protest, opposing confirmation of appellee's appointment and praying that she herself be appointed as guardian. The Commissioner, after hearing the matter, overruled appellant's protest, and ordered that appellee's appointment be confirmed and that letters of guardianship be issued to him upon his giving bond in the sum of $3,000. On appeal to the District Court[2], the Commissioner's order was affirmed. From the judgment affirming that order, an appeal has been taken to this Court.

Appellee has moved to dismiss the appeal, on the ground that this Court has no jurisdiction thereof. Section 128 of the Judicial Code, as amended by §1 of the Act of February 13, 1925, c. 229, 43 Stat. 936, 28 USCA §225, provides that this Court shall have appellate jurisdiction to review final decisions in the District Courts for Alaska "in all cases, civil and criminal, wherein the Constitution or a statute or treaty of the United States or any authority exercised thereunder is involved; in all other civil cases

[2]The District Court for Alaska has appellate jurisdiction to review orders, decrees and judgments of United States Commissioners exercising probate jurisdiction. Act of June 6, 1900, c. 786, §§940-943, 31 Stat. 479, 480; Compiled Laws of Alaska, 1933, §§4571-4574.

wherein the value in controversy, exclusive of interest and costs, exceeds $1,000; in all other criminal cases where the offense charged is punishable by imprisonment for a term exceeding one year or by death, and in all habeas corpus proceedings;" and shall have appellate and advisory jurisdiction, under §§24 and 25-of the Bankruptcy Act, "over all proceedings, controversies, and cases had or brought in the District Courts [for Alaska] under that Act or any of its amendments."

This, obviously, is not a case "wherein the Constitution or a statute or treaty of the United States or any authority exercised thereunder is involved," nor a criminal case, nor a habeas corpus proceeding, nor a proceeding, controversy or case brought under the Bankruptcy Act or any of its amendments. Nor is it a case "wherein the value in controversy, exclusive of interest and costs, exceeds $1,000." There is here no controversy regarding money, property or property rights. The only matter in controversy is the custody of two minor children. The right to such custody cannot be measured in money. There is, therefore, no "value in controversy" on which appellate jurisdiction may be predicated. Barry v. Mercein, 5 How. 103, 119; De Krafft v. Barney, 2 Black 704, 714; In re Burrus, 136 U. S. 586, 595; Leak v. Leak (C. C. A. 9), 156 F. 473, 474. Hence, we conclude, jurisdiction of this appeal is not conferred by §128 of the Judicial Code.

Appellant contends that jurisdiction is conferred by §943 of the Act of June 6, 1900, c. 786, 31 Stat.

480 (Compiled Laws of Alaska, 1933, §4574), which provides that, on appeal from the order of a United States Commissioner exercising probate jurisdiction, the District Court for Alaska or the judge thereof shall determine the issues and "make such order in the premises as he may see fit," and that such order "shall be deemed a judgment, subject to appeal in the manner provided for appeals from judgments in the district court."

Appellant's contention must be rejected. Section 943 does not, of itself, confer or purport to confer any appellate jurisdiction on this court. It merely provides that orders made by the District Court for Alaska in probate cases shall be deemed judgments, subject to appeal in the manner provided for appeals from other judgments of that court. Appeals from other judgments of that court are provided for only in the cases specified in §128 of the Judicial Code. This is not one of those cases. The motion to dismiss must, therefore, be granted.

Appeal dismissed.

[Endorsed]: Opinion. Filed May 8, 1936. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 7992.

WILHELMINA SUMI,

Appellant,

vs.

ALSIE M. YOUNG,

Appellee.

DECREE OF DISMISSAL

APPEAL from the District Court of the United States for the Territory of Alaska, Fourth Division.

THIS CAUSE came on to be heard on the Transcript of the Record from the District Court of the United States for the Territory of Alaska, Fourth Division, and on the Motion of Counsel for the Appellee to Dismiss the Appeal therein, and was duly submitted:

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged, and decreed by this Court, that the said Motion to Dismiss the Appeal in this cause be, and hereby is granted, and that the appeal in this cause be, and hereby is dismissed, with costs in favor of the appellee and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellee recover against the appellant for her costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered. May 8, 1936.

United States Circuit Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Monday, August 17, 1936.

Before: WILBUR, GARRECHT and DENMAN, Circuit Judges.

[Title of Cause.]

ORDER DENYING PETITION FOR A REHEARING.

Upon consideration thereof, and by direction of the court, IT IS ORDERED that the petition of appellant, filed June 6, 1936, for a rehearing of above cause be, and hereby is denied.

[Title of Court and Cause.]

ORDER STAYING ISSUANCE OF MANDATE.

Upon application of Herman Weinberger, counsel for the appellant, and good cause therefor appearing, IT IS ORDERED that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including October 1, 1936; and in the event the petition for a writ of certiorari to be made by the appellant herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

FRANCIS A. GARRECHT,
United States Circuit Judge.

Dated: San Francisco, California,
August 20, 1936.

[Endorsed]: Filed Aug. 20, 1936.

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred thirty-five (135) pages, numbered from and including 1 to and including 135, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 14th day of September A. D. 1936.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 9, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(8503-C)